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AIRLINE DEREGULATION

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

AIRLINE DEREGULATION AND THE EFFECT IT HAS HAD ON AIRLINE TRANSPORTATION IN THE UNITED STATES

MARCH 25, 1987

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AIRLINE DEREGULATION

WEDNESDAY, MARCH 25, 1987

U.S. SENATE,
SUBCOMMITTEE ON ANTITRUST,
MONOPOLIES, AND BUSINESS RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard Metzenbaum (chairman of the subcommittee) presiding.

Also present: Senators Thurmond, Specter, Humphrey, and DeConcini.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator METZENBAUM. Good morning.

As any regular airline passenger knows, something is very wrong in the airline industry. Mergers have become a way of life, delays are rampant, and service is declining. The purpose of this hearing is to shed some light on why.

The Airline Deregulation Act was passed in 1978 to allow the airlines to compete, to allow for new entry, to allow for price competition. For a while, it worked. Several dozen new airlines entered the market from 1978 to 1985; competition flourished.

Today, however, many of those carriers no longer fly as independent lines. Since 1985, Muse, Frontier, People Express, Republic, Ozark, Western, Continental, Eastern, New York Air, PSA, and now, apparently, Piedmont have been acquired by other airlines.

The industry is more concentrated than ever before. Nine airlines control 94 percent of the market. At the same time, consumer complaints are literally skyrocketing—flight delays, overbooking, mechanical failures, lost baggage, and poor service.

And what about prices? In the very short term, if you are able to meet a number of conditions and are flying on heavily traveled routes, air fares are a bargain. But as the number of carriers continues to decrease and as the surviving airlines become more accustomed to doing business with one another, the smart money says that the discount fares will rise in price and decrease in availability.

If you want to go from one major terminal in this country to another major terminal where there are a lot of flights and a lot of passengers, there is a good likelihood you may be able to get a discount fare. But where there is not any competition and you want to go to one of the smaller cities of this country, you pay through the nose.

And it is an interesting fact that as I announced this hearing and some of my colleagues learned about it, they came forth with their own comments, saying what a problem it is to get to their own communities and how the prices have skyrocketed in their getting to those communities.

Even now the business traveler who must fly on short notice, the individual who lives in a small city, and the person who needs to fly to a place served only by one carrier face prices that have increased since 1978, and the sad fact is that these prices will continue to rise.

Now, how did this happen? There are no simple answers to all of the problems, but certain facts are obvious. Airline mergers have proceeded at a break-neck pace with barely a whimper being uttered by the Department of Transportation.

In August of 1981, the President fired approximately 11,000 members of PATCO. Since that time, our air traffic control system has been short of experienced, seasoned air traffic controllers. The result has been a record number of flight delays and near misses.

This Senator has difficulty in understanding the President's position with respect to this issue. If somebody commits a crime in this country, they pay their penalty; they go to the penitentiary or they are required to do some sort of community service or they pay their fine. Some of the criminal acts that have occurred have resulted in people getting very, very small penalties.

But these 11,000 employees did not commit any heinous crime. Instead, these 11,000 employees went on strike in violation of the law and the President saw fit to fire all of them. But I have difficulty in understanding why we would deprive them of the opportunity to make a living in their chosen profession. There are not a hundred places they can go to find a job; there is one.

But somehow this government has concluded that they cannot be rehabilitated, they cannot come back into the workforce. If I sound angry about it, it is because I am angry. It is not because so many of them have spoken with me; almost none of them have spoken with me. I just think it is an absurd governmental policy.

And the worst part is that the people of this country are paying the price because we need them in the traffic control towers; we need their experience. But, no. We have to prove how tough we are. We are really strong, we are macho; we will show those people, damn it. They saw fit to go on strike. Today, we are fortunate if individuals convicted of drug crimes serve as much as five years, but those 11,000 PATCO members have been treated worse than those kinds of criminals.

While this hearing will not specifically address the PATCO firings, I want it clearly understood, as if I have not already done so, that this Senator has very strong feelings on this subject and believes that those men and women are entitled to have an opportunity to go back to work.

Instead of reinstating air traffic controllers to handle flight delays, the Department of Transportation granted antitrust immunity to the airlines to let them work out mutually beneficial scheduling.

Instead of concentrating on customer service, too many airlines have concentrated on slick advertising, advertising that tells you

how cheaply you can fly from here to there. The only thing they do not tell you is there are not any tickets available; that that is just a come-on.

Look at what a great bargain we have got; you can fly from here to anywhere you want and you get all these benefits and it is so cheap. Oh, I forgot to tell you, we do not have any tickets left to sell you. The average American, when he or she goes to buy one of those tickets, they are just not there.

I have introduced legislation, joined by Senator Rudman, to sunset immediately the Department of Transportation's antitrust authority over the airline industry. Today, we will discuss with our witnesses their views on this transfer of antitrust jurisdiction to the Department of Justice.

The free enterprise system should be able to accommodate a competitive and responsible airline industry, and I look forward to exploring with today's witnesses how we can best achieve that goal.

Now, we have statements from Senators Hatch and DeConcini which we will insert into the record at this point.

[The statements follow:]

PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

This morning we meet to discuss the impact of airline deregulation. Certainly, airline deregulation achieved many of the goals sought by the legislation in 1978: New carriers have entered the airline transportation market and fare levels have dropped significantly due to increased competition.

However, problems have arisen as well. Service to small and medium sized communities, those for whom service is more costly, has become less frequent, more expensive, and in some instances, unavailable as to particular carriers. Moreover, the dramatic restructuring experienced by the airline industry, particularly in the last year and a half, has alarmed many. These mergers have resulted in a significant consolidation of the market and it is appropriate for the Antitrust Subcommittee to focus on the effects of the changes in market activity brought about by deregulation.

I commend the Chairman for examining this important issue and I appreciate having the benefit of the testimony of the witnesses here today.

PREPARED STATEMENT OF SENATOR DENNIS DECONCINI

Mr. Chairman. I congratulate you on having these important hearings this morning. I am very interested in the subject of airline deregulation and the effect it has had on airline transportation in the United States. I will start out by saying that I am generally in favor of deregulation and voted in October 1978 for the airline deregulation legislation. I have had some second thoughts about that vote, however, as I wait and wait in airports throughout the Midwest as I attempt to fly to Arizona. The midwest is a lovely part of the country and I enjoy my rare scheduled visits there. I do not enjoy spending a good part of my travel time sitting in the St. Louis, Dallas or Chicago airports where before deregulation I could travel straight through from Washington to Phoenix.

I am interested in the comments that the witnesses today will have on the problems presented by deregulation both in service and in competition. I am also very interested in what the witnesses are going to recommend as solutions to these problems.

One of the stated purposes of the airline deregulation act was to "assure a more effective, competitive airline industry." As one of the methods chosen to assure that competitiveness, the Act gave the authority to the Department of Transportation to review and to approve mergers between and among airlines. I direct my colleagues attention to the testimony of my friend Ed Beauvais, Chairman of the Board of America West Airlines, for a startling review of the consequences of the merger mania in the airline industry. Prior to D.O.T. assuming responsibility for review of mergers and acquisitions, there were 28 major air carriers in the U.S. The six larg-

est carriers had a 62% market share at that time. Through mergers and acquisitions since the beginning of 1985, the six largest now have 82% of the market.

If service were getting better or flights more convenient, then perhaps we could overlook this increasing concentration. Unfortunately, they are not. I thank the witnesses for being frank with the Committee and also informative. Your suggestions will be thoroughly considered by my colleagues and I and we look forward to working with you to solve the problems in the airline industry.

Senator METZENBAUM. For our first panel, we have Mr. Matthew Scocozza, Assistant Secretary for Policy and International Affairs of the Department of Transportation—we are very happy to welcome you, Mr. Scocozza—and Roger Andewelt, Deputy Assistant Attorney General, Antitrust Division of the Department of Justice.

I would like to ask each of you to limit your remarks to ten minutes and your entire statements will be put in the record. Please proceed.

STATEMENT OF A PANEL CONSISTING OF HON. MATTHEW V. SCOCOZZA, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION; AND HON. ROGER B. ANDEWELT, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. SCOCOZZA. Thank you, Mr. Chairman. For the benefit of the Committee, we have a very, very long, detailed piece of testimony. For the purposes of today's hearings, I have condensed that to about five pages, so it is very general and I would be delighted to get into any specifics you choose.

Senator METZENBAUM. Very good, Mr. Scocozza.

Mr. SCOCOZZA. It is a pleasure to be here today to discuss the state of competition in the airline industry and the effect of recent airline mergers and acquisitions on competitive behavior.

Any discussion of the current aviation environment must begin with a consideration of deregulation. As you know, the aviation industry was deregulated in 1978 and the reforms brought by this change in economic policy shape today's market. The traveling public has benefited enormously from the range of price and service options spurred by deregulation.

A Brookings Institute study estimates that this policy has provided the consumer with $6 billion annually in lower costs and more frequent flights. Air carriers, too, have benefited, largely from the enhanced ability to adjust price and service offerings in response to changing economic conditions and consumer preference. Also, without the flexibility brought by deregulation, the carriers would have been much more susceptible to the generally adverse economic conditions experienced during the early part of this decade. Further, an article in Dun's Business Monthly notes that the economy has prospered due to the economic regulatory reforms. "In aviation alone," the article says, "deregulation has increased the nation's gross national product by $8 billion in 1977 dollars. That equals a permanent .4 percent increase in GNP." Most importantly, Mr. Chairman, competition has been enlivened by deregulation. In fact, competition today is more dynamic and diverse in its many elements than ever.

It should come as no surprise, then, that U.S. air carriers have responded to the many industry developments which have come in the wake of deregulation by seeking to consolidate and ensure the efficiencies necessary to maintain their long-term viability in a more competitive marketplace. The consumer preferences for on-line services, frequent flyer programs, and better access to foreign markets have created an environment where large carriers have significant competitive advantages in the national marketplace. The whole point of deregulation was to create a marketplace where consumers, not government, would determine the structure of the industry, and that is precisely what is happening today.

Turning to our merger responsibilities, as you know, Mr. Chairman, the Department retains an obligation to approve airline mergers and acquisitions. That responsibility was also set out by Congress in the Airline Deregulation Act, which amended the Federal Aviation Act. It is Section 408 of the Federal Aviation Act that governs airline mergers and acquisitions.

In enacting the deregulation initiative, Congress indicated that Section 408 must be administered consistent with the national intent to move the industry rapidly towards deregulation. The Conference Report to the Deregulation Act stated clearly that, "The foundation of the new airline legislation is that it is in the public interest to allow the airline industry to be governed by the forces of the marketplace."

Section 408 now requires the Department to approve an acquisition that will not result in a monopoly or further an attempted monopoly and that will not likely lessen competition substantially in any region of the United States, and also that is not inconsistent with the public interest. It further requires the Department to disapprove transactions that do not satisfy these standards, unless the Department finds that they meet significant transportation needs and conveniences of the public that cannot be met through any reasonably available alternative transaction that would be materially less anti-competitive.

The primary focus of the Department's inquiry in each merger case is, as Congress intended, on the competitive consequences of the transaction. Deregulation gave airlines the right to enter and exit markets without governmental supervision. The effective exercise of this right is essential to ensuring a competitive airline industry. It provides carriers with the opportunity to choose the markets they will serve and to respond to any perceived deficiencies in market performance. There is little doubt that freedom of entry exerts considerable pressure on incumbent carriers to provide competitive fares and services, and that entry barriers have precisely the opposite effect.

It is against this background that the Department, in reviewing airline mergers and acquisitions, carefully examines the degree to which other carriers can freely and effectively enter the markets that will be served by the merged carriers. In this regard, we review the applicant's national market share and consider whether there are significant barriers to entry at the airports which they serve. Where the freedom to enter a market is not unduly constrained and can be relied upon to maintain the consumer benefits afforded by meaningful competition, the Department believes that

mergers are fully consistent with the applicable statutory requirements and should be approved.

Since the beginning of 1985 when DOT assumed the former responsibilities of the Civil Aeronautics Board, 17 applications have been filed with the Department of Transportation for approval of substantial transactions under Section 408. The Department has issued final decisions on 12 of these applications, approving 11; two were withdrawn and three are pending. Most of these cases were non-controversial. There was no policy opposition within the federal government. Only four cases were contested by the Department of Justice, contrary, I believe, to some common misconceptions, and in just two of those cases did we approve acquisitions that Justice thought should be disapproved.

Our differences with the Department of Justice center principally on the matter of market concentration. In examining the competitive consequences of a proposed merger, we have found valid the Civil Aeronautics Board's principle that the change in the amount of concentration in individual city pair markets is usually not a useful guide to the competitive effects of the acquisition. We have found, as did the Board, that these statistics are not ordinarily useful, since airline markets are competitive, even though individual city pair markets tend to be highly concentrated under standard measures. The ease of entry will permit other carriers to quickly begin serving a route if the incumbent carriers charge supra-competitive fares or operate a level of service below the competitive level. Instead of relying heavily on concentration figures, we engage in a functional analysis that examines how an acquisition is likely to affect the markets at issue in light of the airline industry's economics and operating practices.

Let me say in closing, Mr. Chairman, that we at the Department take our responsibility to protect the aviation system and the American people from anti-competitive behavior very, very seriously. We exercise that responsibility with great care and concern. We also are mindful of the fact that it is the energy, ingenuity and hard work of the American people that drives the engine of our economy, and government should act wisely not to stall that engine through unwise regulation. Given the guidance we have received from the Congress through the Airline Deregulation Act, the Department has labored to protect the public interest and stay out of the way of legitimate economic progress. I believe we have succeeded.

I would be delighted to answer any questions, Mr. Chairman.

[The prepared statement follows:]

TESTIMONY OF MATTHEW V. SCOCOZZA
ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF TRANSPORTATION, BEFORE
THE SUBCOMMITTEE ON ANTITRUST, MONOPOLIES, AND
BUSINESS RIGHTS, SENATE COMMITTEE ON THE JUDICIARY
MARCH 25, 1987

Good morning, Mr. Chairman and Members of the Subcommittee. It is a pleasure to be here today to discuss the state of competition in the airline industry and the effect of recent airline mergers and acquisitions on competitive behavior.

I would like to begin my testimony by discussing the major forces that are shaping the structure and behavior of the airline sector as this relates to industry competition. Next, I will discuss in considerable detail the administrative procedures as well as the analytical and legal criteria we consider at the Department of Transportation in reaching our decisions on mergers and acquisitions. Finally, I will review each of the Department's decisions to give this Subcommittee a thorough explanation of why and how we arrived at our conclusions.

As you know, the aviation industry was deregulated in 1978 and the reforms brought by this change in economic policy shape today's market. Airline deregulation has been one of the most important and successful federal policy initiatives of the past generation. The traveling public has benefited enormously from the range of price and service options spurred by deregulation. A Brookings Institute study estimates that this policy has provided the consumer with $6 billion annually in benefits. Air carriers, too, have benefited, largely from the enhanced ability to adjust price and service offerings in response to changing economic conditions and consumer preference. Without this flexibility, air carriers would have been much more susceptible to the generally adverse economic conditions experienced during the early part of this decade. Furthermore, an article in Dun's Business Monthly notes that the economy has prospered due to the reforms of deregulation. "In aviation alone," the article says, "deregulation has increased the nation's gross national product by

$8 billion in 1977 dollars ... that equals a permanent 0.4 percent increase in GNP."

Let's consider a few other key developments in the industry since enactment of the Airline Deregulation Act in 1978:

* In October 1978, 34 certificated airlines provided scheduled passenger service, three provided scheduled all cargo service and eight provided charter services. Today, 137 certificated airlines are operating. Of these, 50 offer scheduled jet passenger services.
* Between October 1978 and October 1986, scheduled revenue passenger-miles increased 63 percent (from 222 billion to 361 billion). Passenger enplanements increased 53 percent (from 269 million to 413 million).
* Scheduled available seat-miles have increased 66 percent since 1978.
* In October 1978, the industry work force totaled 341,315 full-time and part-time employees. By October 1986, employment had increased to 444,866.
* Also, the number of competitive markets jumped from 1,126 to 1,834 between February 1978 and February 1987.

Most importantly, Mr. Chairman, competition has been enlivened by deregulation. In fact, competition in the industry today is more dynamic and diverse in its many elements than it ever has been. Airline deregulation has worked, is working, and, given the Department's commitment to preserving a competitive environment, will continue to work.

We must recognize that changing industry operating practices and marketing strategies are working to reshape the structure and business practices of the airline industry to the benefit of competition. Although not every air carrier has benefited equally

in this revamping of the industry, these developments, overall, serve to promote competition, and that is the intent of deregulation.

One of the most significant developments in airline operations has been the establishment and growth of hub-and-spoke route networks. In the post-deregulation era, air carriers have adopted exciting, innovative competitive strategies, like the hub-and-spoke mechanism, that emphasize traffic retention -- that is, retaining travelers through their entire trip.

The benefits of hub-and-spoke networks to air travelers and carriers are substantial. Most passengers prefer nonstop service; however, the number of city-pair markets that can support nonstop service is quite small. In lieu of a nonstop flight, there is a preference to remain on the same airline by taking either a single plane or a connecting flight. Hub-and-spoke operations increase these possibilities. In addition, passengers traveling to and from low-density markets have much greater access to a large number of markets through the hub airport than they did previously.

For airlines there are two major benefits to the hub-and-spoke systems. The first is the increased revenue that results from retaining more passengers on-line. The second is the more efficient use of aircraft and personnel. By consolidating operations at a hub airport, a carrier can increase its load factors on most flights into and out of a hub airport.

The growth in hub-and-spoke route networks allows competitors to take different forms -- there may be direct competition among those carriers serving a hub or among different carriers that provide competing services over alternative hubs. The fact that passengers can generally reach their destination by connecting with different carriers through alternative hubs expands the range

of consumer choice and enables competition to flourish. In fact, the growth of hub-and-spoke route systems has increased competition among hubs. For example, passengers traveling between the east and west coasts can choose among carriers offering competitive service through Minneapolis/St. Paul, Chicago, Pittsburgh, St. Louis, and other locations. The relative ease with which air carriers can enter a market serves to exert considerable pressure on incumbents to provide competitive fares and services, even in concentrated hub markets. And, in studying competitive possibilities, the Department believes that the appropriate approach is to focus on freedom of entry and barriers to entry in considering the availability of expansion and/or new entrants.

New hubs have also been developed. American Airlines has expanded service at Nashville and is in the process of building a major hub at Raleigh/Durham; Piedmont has developed Charlotte and Baltimore into major hubs; and United's growing presence at Dulles will provide increased competition for north-south and east-west traffic.

The policy of deregulation has also had a profound effect on the internal efficiencies of the industry. During the initial phases of deregulation, the large, established jet operators had higher costs than new entrants. However, in a competitive environment, the established carriers were compelled to become more efficient and cost competitive with these new entrants in order to survive. As the major carriers have become more efficient, they have been able to expand their operations and, predictably, increase nationwide competition.

The experience of American Airlines is an excellent example of how an established carrier has transformed itself into a major competitive force. American pursued a strategy of rapid internal growth -- a strategy that, to be successful, is contingent upon American continuing to lower its costs. Such reductions have been

achieved largely through the hiring of new employees at market wage rates and through more efficient operating practices. Expansion has been particularly strong at American's major hubs (Dallas/Ft. Worth and Chicago), and the carrier has recently expanded service at its new Nashville hub (opened April 1986). American will offer additional domestic service when its Raleigh/Durham hub is completed (mid-1987). The airline is also providing new service to Europe and expanded service in the Caribbean.

Evidence of increased competition in today's market is also available in the development of imaginative marketing programs utilized by the carriers. Frequent flyer programs, for instance, are an integral part of today's marketing practices. And, it is generally acknowledged that a large service network improves the marketing strategy of these programs making it easier for passengers to accumulate the necessary mileage to participate in the plans and also offers consumers a greater variety of attractive destinations. Air travelers value these programs highly. And carriers must continue to adjust their marketing practices and service networks to accommodate consumer preferences.

Finally, our international carriers have found that, in order to compete effectively with foreign carriers, they must exploit their natural advantages in their home market. This includes feed from on-line domestic connections. This allows our carriers to offer direct services from a large number of interior U.S. points to foreign destinations - to the benefit of both U.S. carriers and consumers alike. In fact, Congress specifically recognized in 1980 these factors in establishing the international aviation policy of the United States, contained in section 1102(b) of the Federal Aviation Act.

It should come as no surprise then that U.S. air carriers have responded to these developments by seeking to consolidate and ensure the efficiencies necessary to maintain their long term

viability in a competitive marketplace. The consumer's preferences for on-line services, frequent flyer programs and better access to foreign markets has created an environment where large carriers have significant competitive advantages in the national marketplace. The whole point of deregulation was to create a marketplace where consumers, not the government, would determine the structure of the industry -- and that is precisely what is happening today. Airlines are now competing more vigorously than ever to deliver what the consumer wants. Mr. Chairman, the airline industry is transforming itself. The forces that are propelling these changes affect service networks, operations, marketing practices, and competitive behavior. Overall, these forces are working to strengthen competition in the airline industry, not weaken it.

I would now like to focus attention on consolidations and our legal approach to considering mergers and acquisitions.

As you know, the Department of Transportation has considered a number of mergers and acquisitions during this past year. This consolidation has been the focus of much attention and not a little concern. Let me say, Mr. Chairman, during our consideration process we have acted with great care and, certainly, within the guidelines set by Congress upon passage of the Airline Deregulation Act. Section 408 of the Federal Aviation Act of 1958 governs airline mergers and acquisitions. That section requires the Department's prior approval for the acquisition of control of one air carrier by another carrier or person controlling another carrier.

Today, section 408 embodies antitrust standards traditionally applied by the courts to unregulated industries. But, it was not always that way. In fact, prior to 1978, this section conferred broad discretion on the Civil Aeronautics Board to approve or disapprove airline mergers and acquisitions under a "public

interest" test. History shows that there were times when the CAB used this authority to disapprove mergers, not because they harmed competition per se, but rather because they could tear the fabric of the highly structured route network that the Board had created over time. In fact, I know of at least one case in which the CAB rejected a merger precisely because it would have promoted competition thereby diverting traffic and revenues from other members of the "club".

That the CAB should have applied section 408 in this fashion is not surprising, since that section was an integral part of a then intensely regulated regime which valued protection and governmental intervention over competition and market-oriented decision-making.

When it became clearly evident by the mid-to-late seventies that the aviation industry could operate more effectively and efficiently without the constraints of federal economic regulations, Congress responded by adopting the Airline Deregulation Act of 1978. This measure amended the Federal Aviation Act and brought the law governing airlines closer to laws governing non-regulated industries. The foundation of the new statute was, and continues to be, that it is in the public interest to allow the airline industry to be governed by the forces of the marketplace.

It is in this setting that the ADA substantially revised section 408 of the Act. Consistent with the deregulated environment in which air carriers would be operating, the major purpose of the amendments was to ensure that airline mergers and acquisitions would be tested by the antitrust standards applicable to unregulated industries. In enacting these changes, Congress indicated that section 408 must be administered consistent with its intent to move the industry rapidly towards deregulation. The Conference Report to the Deregulation Act, in explaining the changes to section 408, stated clearly that, "The foundation of the new airline legislation is that it is in the public interest

to allow the airline industry to be governed by the forces of the marketplace."

Accordingly, section 408 now requires the Department to approve an acquisition (1) that will not result in a monopoly or further an attempted monopoly and that will not likely lessen competition substantially in any region of the United States, and (2) that is not inconsistent with the public interest. Section 408 requires the Department to disapprove transactions that do not satisfy these standards, unless the Department finds that they meet significant transportation needs and conveniences of the public that cannot be met through any reasonably available alternative transaction that would be materially less anti-competitive. Section 408 also empowers the Department to impose such conditions on its approval as are considered just and reasonable.

Furthermore, whereas prior to passage of the reforms, when all mergers approved under section 408 of the Act were granted automatic antitrust immunity under section 414 of the Act, the ADA made the grant of antitrust immunity in a merger proceeding discretionary. It should be noted, however, that section 414 was amended again to provide that if an anticompetitive agreement is approved because it offers public benefits or serves transportation needs, and no less anticompetitive means are available, the agreement must be granted antitrust immunity.

In exercising its antitrust authority, the Department has been mindful of the procompetitive policy orientation of the new section 408 of the Act. We wholeheartedly support Congress' approach and have followed its direction. For this reason, the Department usually has not become involved in the details of the proposed transaction beyond that involvement necessary for a sound competitive review. It has specifically refrained from passing judgment on whether the transaction under consideration would be profitable, and, if consistent with the antitrust laws, whether it will divert traffic from other carriers. We strongly believe that

the marketplace should be the principle discipline for the carriers' business decisions. It is also our conviction that DOT's principal role in a deregulated environment is to protect the competitive process, not individual competitors.

Accordingly, the Department has examined the competitive effects of airline mergers and acquisitions under the standards established by section 7 of the Clayton Act, which governs mergers and acquisitions in unregulated industries. Our approval of mergers and acquisitions has been based on well-developed evidentiary records that show that there is no likelihood of a substantial reduction in competition in any relevant markets.

Therefore, Mr. Chairman, the primary focus of the Department's inquiry in each merger case is, as Congress intended, on the competitive consequences of the transaction. Our approach recognizes the important role that competition plays in disciplining carriers' pricing and service decisions, and, therefore, focuses on those considerations that affect competitive performance. For this reason, the Department's merger analysis carefully examines the structural characteristics of the markets at issue -- characteristics that are most likely to determine the ability of competitors to check the exercise of market power by the merged carrier. In this context, the crucial question in each case is whether the merged carrier would be able to raise prices above or reduce service below, competitive levels.

Deregulation gave airlines the right to enter and exit markets without governmental supervision. The effective exercise of this right is essential to ensuring a competitive airline industry. It provides carriers with the opportunity to choose the markets they will serve and to respond to any perceived deficiencies in market performance. There is little doubt that freedom of entry exerts considerable pressure on incumbent carriers to provide competitive

fares and services, and that entry barriers have precisely the opposite effect.

It is against this background that the Department, in reviewing airline mergers and acquisitions, carefully examines the degree to which other carriers can freely and effectively enter the markets that will be served by the merged carriers. In this regard, we review the applicants' national market share and consider whether there are significant barriers to entry at the airports which they serve. Where the freedom to enter a market is not unduly constrained, and can be relied upon to maintain the consumer benefits afforded by meaningful competition, the Department believes that mergers are fully consistent with the applicable statutory requirements and should be approved. In examining the competitive consequences of a proposed merger, we have found valid the Civil Aeronautics Board's principle that the change in the amount of concentration in individual city-pair markets is usually not a useful guide to the acquisition's competitive effects. We have found, as did the Board, that concentration statistics are not ordinarily useful since airline markets are competitive, even though highly concentrated under standard measures, because the ease of entry will permit other carriers to quickly begin serving a route if the incumbent carriers charge supracompetitive fares or operate a level of service below the competitive level. Instead of relying on concentration figures, we engage in a functional analysis that examines how an acquisition is likely to affect the markets at issue in light of the airline industry's economics and operating practices.

In those instances where competition may be reduced and therefore cannot be relied upon to protect consumers, the Department will disapprove the merger. The Department does not, however, specify the conditions that would allow us to approve the transaction. Rather, we identify the competitive problems that preclude our approval of the transaction, and leave it to the parties to devise a remedy for those problems. The parties then have to submit a

revised proposal to the Department for review if they choose to proceed with the merger or acquisition.

I would like to emphasize that the Department has not approved any section 408 transaction on the ground that the transaction, although anticompetitive, meets transportation needs and public benefits that cannot be obtained by any reasonably available, less anticompetitive transaction. Nor has the Department granted antitrust immunity under section 414 of the Act to any transaction approved under section 408.

I would also like to emphasize that while the public interest standards of section 408 were retained, Congress in enacting the Airline Deregulation Act directed that those standards be interpreted in light of the intent of Congress to move the airline industry rapidly towards deregulation. Consequently, both the Department and the CAB have construed the non-competitive public interest aspects of merger and control transactions narrowly. Generally speaking, this has been limited to careful scrutiny of labor-related issues that have been presented in the context of merger cases. As directed by the Act, the Department has considered the likely impact of each transaction is on fair wages and equitable working conditions. We have reviewed the record in each case to determine whether employees' interests can be adequately protected through the collective bargaining process, and if not, whether the Department should intervene in labor-management issues by, among other things, imposing labor protective provisions.

We try to render our decisions fairly and expeditiously. Before the ADA, merger and acquisition proceedings were usually the object of a very tedious, expensive and time-consuming process. Virtually all applications involving these transactions were set for oral evidentiary hearings before a CAB administrative law judge. This resulted in lengthy trials, voluminous exhibits and substantial delays in nearly every case. The typical contested

merger proceeding could take as long as two or three years to complete.

Congress appreciated that this situation was incompatible with the deregulated environment because it denied carriers the flexibility needed to respond effectively to changes in the marketplace. Accordingly, in adopting the ADA, Congress determined that the antitrust relationships that required approval under section 408 had to be considered expeditiously. In fact, it specifically amended the Act to require that all applications submitted under section 408 be decided within six months of their submission. Further, it placed upon the opponents of the transaction the burden of proving the anti-competitive effects of the transaction within that time frame.

The Department has acted in accordance with these determinations. We have attempted to decide merger cases promptly and to eliminate bureaucratic red tape that could deny parties the relief they are entitled to receive. We have tailored our procedures to the requirements of specific cases. In doing so, the need to avoid procedural delay has been carefully balanced with the equally important need to provide a full and fair hearing on each application requiring approval under section 408.

We have been successful in meeting these important procedural objectives. The Department has held comprehensive hearings to consider the merits of a number of major merger cases and it has met the six-month deadline established by Congress. Furthermore, the Department has used show-cause procedures to expedite the processing of merger applications where there have been no factual issues whose resolution required an oral evidentiary hearing. In addition, the Department has exempted transactions from section 408 review procedures when they appear to present no significant competitive issues. I will detail these situations in a moment. Similarly, the Department has approved voting trust arrangements

that allow an acquiring carrier to pursue a bid for another carrier without being needlessly delayed by section 408's prior approval requirements, so long as the voting trusts adequately prevent the acquiring party from exercising control of the target carrier during the Department's review of the acquisition.

Mr. Chairman, I would like next to discuss the various particulars of the mergers and acquisitions we have handled to date, but first let me recap briefly the mechanics of our procedures for handling these cases. As noted, section 408 of the Federal Aviation Act provides the statutory framework for the Department's review of the transactions, and the Airline Deregulation Act of 1978 substantially overhauled the substantive provisions of that section. These changes were intended to ensure that, consistent with Congress' intent to deregulate the airline industry, airline mergers and acquisitions would be tested by the antitrust standards traditionally applied by the courts to unregulated industries. The amendments were also designed to promote the expeditious consideration of section 408 cases, and limit governmental interference with decisions reached by airline managers to actions necessary to ensure compliance with the requirements of the new section 408.

Against this background, the Department has, in reviewing airline mergers and acquisitions under section 408, focused on the competitive issues considered under the antitrust laws which apply to unregulated industries. We have refused to substitute our judgment for that of the marketplace with respect to the economic wisdom of a proposed transaction. Where we have identified competitive problems, we have required the proponents of the transaction to propose modifications to address those problems, as opposed to modifying transactions by government fiat. In addition, we have refrained from becoming involved in the details of a proposed transaction by construing the non-competitive public interest aspects of these transactions narrowly. Finally, the Department has endeavored to decide cases arising under section

408 swiftly, taking into consideration the need to provide a full, fair and thorough hearing on the merits of each case. The Department believes that this approach to mergers and acquisitions reflects the goals and objectives of the new section 408, and, equally important, the over-arching pro-competitive policy orientation of the ADA.

Mr. Chairman, seventeen applications for approval of substantial transactions under section 408 have been filed with the Department of Transportation since the beginning of 1985. The Department has issued final decisions on twelve of those applications, two were withdrawn (Texas Air's 1985 proposed acquisitions of TWA and Frontier), and three are pending decision (the American-AirCal case, the TWA-USAIR case and USAIR-Piedmont). In addition, the Department has acted on a number of applications to exempt an airline acquisition or control transaction from the requirements of section 408, but most of those cases involved acquisitions of relatively small size (e.g., USAir's acquisition of Pennsylvania Commuter)where no party, including the Department of Justice, raised an objection on competitive grounds.

One acquisition case we considered did not involve a carrier's proposal to acquire a second carrier or a substantial portion of the second carrier's routes. Instead, the transaction involved Northwest's purchase of a 50 percent interest in TWA's PARS computer reservations system (a system marketed to travel agents), Order 86-12-13 (December 4, 1986). The Department exempted the asset purchase from section 408 since we found that it would not substantially reduce competition. Northwest did not own a computer reservations system and it was unlikely that Northwest would enter the CRS industry on its own. Since NWA and TWA stated their intent to ask other carriers to become partners in the marketing of the system, we noted that the transaction might increase competition in the airline industry. We did not, however, rule on whether the proposed operation of the joint venture would be consistent with the antitrust laws.

The majority of the acquisition cases considered by the Department have involved few, if any, significant competitive issues. In three cases, a major airline acquired a commuter carrier (a carrier operating only small aircraft) or a regional carrier to obtain feed traffic to support the major's large aircraft operations. These transactions have been noncontroversial and do not raise serious competitive issues because the acquiring company typically does not serve the type of markets served by the smaller carrier. Among the transactions of this kind were Piedmont Aviation's acquisition of Empire Airlines, a smaller operator in the Northeast, Order 86-1-45 (January 23, 1986), Alaska Air Group's acquisition of Horizon Air, a commuter operating in the Pacific Northwest, Order 86-12-61 (December 23, 1986), and People Express' purchase of Britt, a midwestern commuter, Order 86-2-34 (February 19, 1986). There was no opposition to any of these transactions on competitive grounds.

Another case, Horizon-Cascade, involved one commuter carrier's purchase of another. Both commuters operated in the Pacific Northwest, Order 86-1-67 (January 30, 1986) (the acquisition was never completed since Horizon decided to withdraw from the transaction; Cascade's financial difficulties caused it to cease all operations within a few months of the application). We reasoned that the acquisition would not have caused a substantial reduction in competition, although the combination of these two commuter airlines would have eliminated direct competition in several Pacific Northwest markets. The acquisition nonetheless was unlikely to reduce competition substantially, largely because other commuter carriers could enter the markets served by Horizon and Cascade, as could major airlines, either on their own or by financing the development of a new commuter airline. Although the acquisition would have eliminated some direct competition, the markets losing competitive service tended to be too small to support competition in the long run.

Alaska Air Group's acquisition of Jet America was another case where the carrier being acquired was of relatively small size -- Jet America served only ten airports with six aircraft, Order 86-9-18 (September 10, 1986). We found that Alaska's acquisition of Jet America -- a transaction unopposed on competitive grounds -- would not substantially reduce competition in view of Jet America's size and the ability of numerous other carriers to compete in its markets. As was true of the target carrier in several other cases, Jet America was also in weak financial condition.

Three other cases involved acquisitions that were essentially end-to-end transactions, that is, the acquiring carrier wished to extend its operations into areas of the country where its operations were relatively insignificant. Such transactions do not eliminate any direct competition -- instead, the acquisition strengthens the acquiring company by expanding its operations thus enabling it to compete more effectively with carriers already providing nationwide service. End-to-end acquisitions include Delta's acquisition of Western, Order 86-12-30 (December 11, 1986), People Express' acquisition of Frontier, Order 85-11-58 (November 20, 1985) and USAir's acquisition of PSA, Order 87-3-11 (March 4, 1987).

In four other cases, Mr. Chairman, the carrier being acquired was in such poor financial condition that its ability to maintain competitive service was, at best, in doubt (in addition to the cases discussed below, the Horizon-Cascade, People Express-Frontier, and Alaska-Jet America cases involved the acquisition of a carrier in weak financial condition). Midway's acquisition of Air Florida, for example, involved a company which had ceased operations upon filing for bankruptcy and whose restored operations were dependant upon the financial assistance of the acquiring carrier, Order 85-6-33 (June 11, 1985). We also exempted United's acquisition of aircraft, airport facilities and airport slots from People Express, Frontier and Britt because we found that the sale of these assets was necessary to preserve

Frontier's service and stabilize People Express' financial condition, Order 86-8-3 (August 1, 1986). In addition, the transaction would not reduce competition, since the sellers would retain sufficient other assets to continue operating as independent competitors.

Southwest Airlines' acquisition of Muse Air also involved a carrier on the brink of collapse. We found that the acquisition was not inconsistent with the standards of Section 408 on two grounds. First, even if the acquisition would otherwise reduce competition (and we found that it would not), it warranted approval under the "failing company" doctrine because Muse was on the verge of competitive collapse and could only avoid financial failure through its acquisition by Southwest, Order 85-6-79 (June 24, 1985). Second, although Southwest and Muse were the only carriers serving Dallas' Love Field, service provided at the Dallas-Fort Worth Regional Airport would provide competitive discipline for Love Field service and other carriers either were operating a substantial level of service in the applicants' markets or could easily enter those markets. Although the Department of Justice contended that further investigation would be required to substantiate our competitive findings, it agreed that the transaction should be approved under the "failing company" doctrine.

Another acquisition of a carrier in financial trouble -- Texas Air's acquisition of People Express and the assets of People Express' bankrupt subsidiary, Frontier Airlines -- raised more serious competitive issues, although the Department of Justice agreed with us that it was not likely to cause a substantial reduction of competition in any market, Order 86-10-53 (October 24, 1986). Texas Air's subsidiaries competed with People Express in 18 New York City city-pair markets and provided most of the service in the Washington-New York and New York-Boston markets. In addition, Texas Air's subsidiary, Continental Airlines, and Frontier each used Denver as a hub. We determined that the acquisition would not be anti-competitive in the New York

City markets because airport facilities were available for new entry at Newark. In fact, the combining carriers planned to use a new terminal being constructed for People Express at Newark and would surrender People Express' old terminal and ten gates used by the Texas Air carriers, so these facilities could be used by other airlines. Carriers wishing to enter the Washington-New York-Boston corridor markets or other Northeastern markets could also obtain access at Boston's airport and at least one Washington, D.C. facility. At Denver, where there had been a substantial overlap between the services of Continental and Frontier before the latter's suspension of all operations, airport gates were available to new entrant carriers.

This brings us to the four cases decided by the Department, Mr. Chairman, that were the most difficult -- the Pacific Division Transfer Case, where we approved United Airlines' acquisition of Pan American World Airways' international Pacific operations, Order 85-11-67 (October 31, 1985); the NWA-Republic case, Order 86-7-81 (July 31, 1986); the TWA-Ozark case, Order 86-9-29 (September 12, 1986); and the Texas Air-Eastern cases, Order 86-8-77 (August 26, 1986) and Order 86-10-2 (October 1, 1986). While the Department of Justice disagreed in some manner with our result in these cases, in the Pacific Division Transfer Case the disagreement concerned only the procedures for determining whether United's Seattle-Tokyo route should be transferred to another carrier, and in the Texas Air-Eastern case the disagreement concerned the amount of potential replacement service required to maintain competition in the shuttle markets. Only in the NWA-Republic and TWA-Ozark cases did we approve acquisitions that Justice thought should be disapproved outright.

In the Pacific Division Case, we ultimately disagreed with Justice on the disposition of a West Coast Gateway -- Seattle/Portland. We began our inquiry with a consideration of the following:

United had authority to operate flights between Seattle and Tokyo, but the U.S.-Japan bilateral agreement limited United to seven round-trip flights per week, and United could not serve any point beyond Tokyo on those flights. Pan American, however, like Northwest, had unlimited rights to serve Tokyo from several U.S. gateways, and each had some authority to serve Asian points beyond Tokyo on their U.S.-Japan flights. Northwest, which had become the dominant U.S. carrier in the North Pacific markets, and Pan American were operating, respectively, 42 and 32 weekly round-trip flights between the United States and Japan; Japan Air Lines operated 46 weekly flights, and several carriers from other Asian countries provided additional service between the United States and Japan.

We concluded that United's acquisition of Pan American's Pacific operations would not reduce competition, since the restrictions on United's Seattle-Tokyo service had limited United's ability to compete and Pan American's longstanding financial problems impaired its ability to expand service. In addition to the service operated by Northwest and Japan Air Lines, several other Asian carriers provided competitive transpacific service, and the United States had recently won the right to award U.S.-Japan scheduled-service operating authority to two additional U.S. passenger carriers (we have since authorized American to provide Dallas-Fort Worth-Tokyo service and Delta to provide Portland-Tokyo service).

The Department of Justice urged us to disapprove the merger unless we conditioned our approval on a requirement that United be required to give up one of the West Coast gateways held by it or Pan Am. We did not accept this position because, as shown, we found that the acquisition would not be anticompetitive. We did agree, however, to consider, in a separate proceeding, the possible spin-off of United's Seattle/Portland-Japan authority to another carrier. That case was instituted and set for hearing before an administrative law judge by Order 86-9-92, September 30, 1986. Applications to replace United have been filed by American

and Continental Airlines. Direct exhibits were filed on January 22 and rebuttals on February 19. The hearing began on March 9 and ended March 12. Thus, the Department will soon decide in this proceeding whether United or another carrier should be selected to serve this route.

Our second difficult case involved the acquisition of Republic by NWA, the parent corporation of Northwest Airlines. Both Northwest and Republic used Minneapolis-St. Paul ("MSP") as a hub. Northwest and Republic competed on 26 MSP city-pair routes and together provided the majority of flights operated at MSP. The record in our proceeding, however, contained little evidence that the acquisition was likely to cause a substantial reduction in competition in any MSP market. The increase in Northwest's market share at MSP would not be of concern unless competition from other carriers would not prevent Northwest from charging supra-competitive fares. The only party opposing the acquisition was Justice, for Wisconsin supported the acquisition and no state or other civic party or carrier opposed it. We carefully examined the arguments made by Justice, but we could not find persuasive support in the record for those arguments, and as an opponent of the acquisition, Justice had the burden of proof. The record of evidence instead indicated that connecting and one-stop service offered by other carriers would discipline the applicants' nonstop services in MSP markets, and that other carriers could compete in the applicants' MSP markets without establishing a hub at MSP. The evidence thus suggested that other carriers could enter Northwest's MSP markets with "tag-end" service, i.e., flights originating at one point and operated through Minneapolis-St. Paul to another point, since the carriers commonly operated "tag-end" service in other hub markets. The record additionally showed that adequate facilities were available at the Minneapolis-St. Paul airport for carriers wishing to institute or expand service in the applicants' markets or to create a hub at MSP. Moreover, Justice had no factual or analytical support for its argument that a 79 flight hub was necessary to maintain competition, for nothing in

the record suggested that another carrier could not practicably establish a smaller-scale hub. In addition, we could not agree with Justice's assumption that the competitive service lost through the merger had to be replaced by a single carrier operating a hub at MSP; instead, competition could be provided by several different carriers. We carefully analyzed each of the city-pair markets affected by the merger to determine whether other carriers would have the ability to enter if Northwest attempted to charge excessively high fares, and we found that other carriers could provide competitive service in these markets.

Trans World Airlines' acquisition of Ozark Airlines also involved a combination of two carriers sharing the same hub, in this case, St. Louis. The Department of Justice contended that the acquisition should be disapproved on essentially the same grounds as those advanced in the NWA-Republic case. We found that the record did not support the Department of Justice's position. We concluded that the acquisition would not reduce competition at St. Louis, the common hub. Other carriers could offer competitive service in the applicants' markets without establishing a hub at St. Louis and because the St. Louis airport had facilities available for potential new entrants. In addition, Southwest Airlines had begun serving several St. Louis markets and already had access to the airport facilities necessary for establishing a substantial hub operation (60 flights per day) at St. Louis. We found that the record did not support the arguments of the Department of Justice (the transaction's only opponent) that competitive discipline would not be provided in the applicants' St. Louis markets unless another carrier built a hub at St. Louis and that barriers to entry would prevent a competitor's creation of a hub at St. Louis. Although Justice argued that competition could not be preserved unless another carrier created a hub at St. Louis with at least 89 flights each day, Justice failed to submit evidence showing that a hub of that size was competitively necessary.

The other difficult case involved Texas Air's proposed acquisition of Eastern, an acquisition that we initially disapproved and later approved only after Texas Air and Eastern cured the major competitive problem presented by the acquisition, the substantial reduction of competition in the Washington-New York and New York-Boston shuttle markets. Without the remedial action, Texas Air would have controlled the only two carriers then providing shuttle-type service, Eastern and New York Air.

We determined that the acquisition would substantially reduce competition in the shuttle markets unless Texas Air gave up enough slots at Washington National and LaGuardia necessary to enable another carrier to institute frequent service in the shuttle corridor. Effective competition in the shuttle markets requires the operation of frequent service, and providing such service required the possession of a large block of slots spread throughout the day. Despite our buy-sell rule for slots, no other carrier had enough usable slots, or could acquire the additional number needed, for the operation of frequent service. After we began the hearing process on Texas Air's initial acquisition proposal, Texas Air agreed to transfer a significant number of slots to Pan American for use in operating a competitive shuttle service. The Department of Justice had advised Texas Air earlier that it was likely to oppose the acquisition unless Texas Air tooks steps to ensure the maintenance of competition in the shuttle markets, but the Department of Justice concluded that Pan American was purchasing enough slots from Texas Air to prevent the acquisition from substantially reducing competition in the shuttle markets and that Texas Air's acquisition of Eastern accordingly should be approved expeditiously. Despite Pan American's receipt of the additional slots, it would still have had too few slots, especially at peak hours, to provide hourly service in the shuttle markets -- markets dominated by business travellers -- throughout the day. We concluded that, as a result, the shuttle markets would suffer a significant loss of competition. The lack of an ability to offer hourly service, especially at peak times, would

severely handicap Pan Am's competitive effectiveness. We therefore disapproved Texas Air's proposed acquisition of Eastern. Thus, while we shared the same basic competitive concerns of the Department of Justice - that the transaction would reduce competition in Washington/New York/Boston shuttle services - we found that the remedy proposed by the proponents of the transaction and accepted by Justice was not sufficient to address those concerns. We therefore disapproved the transaction.

After we disapproved the acquisition, Texas Air and Eastern agreed to sell Pan American enough additional slots at Washington National and LaGuardia airports so that Pan American could operate effective competition for the Eastern shuttle. As a result, we found that the acquisition, as so modified, would not reduce competition in the shuttle markets.

Although we have always believed that the Department of Justice should exercise the responsibility for reviewing airline acquisitions, we have faithfully carried out Congress' instructions that we approve only those acquisitions which are not likely to cause a substantial lessening of competition. While we have disagreed with the Department of Justice in a few cases, our disagreements stem from a difference of opinion on factual matters in the record of the particular proceeding, not from a difference of opinion on the importance of maintaining competition. And in only two cases -- NWA - Republic and TWA-Ozark -- have our two agencies fundamentally disagreed over the basic question of whether the transaction should be allowed to go forward.

The Department is on record in favor of sunsetting section 408, in favor of more efficient procedures, incorporated in section 7 of the Clayton Act, at the earliest possible time.

Mr. Chairman, I realize I have put you and the members of your subcommittee through an exhaustive catalogue of our activities and an extensive review for the basis of our actions. Given your

interest and the interest of the public in the subject, however, I believe this hearing deserves the detail provided.

Let me add in closing that we at the Department take our responsibility to protect the aviation system -- and the American people -- from anti-competitive behavior very, very seriously. We exercise that responsibility with great care and concern. We also are mindful of the fact that it is the energy, ingenuity and hard work of the American people that drives the engine of our economy and government should act wisely not to stall that engine through unwise regulation. Given the guidance we have received from the Congress through the Airline Deregulation Act, the Department has labored to protect the public interest and stay out of the way of legitimate economic progress. I believe we have succeeded.

Senator METZENBAUM. Mr. Andewelt, we will hear from you next.

STATEMENT OF HON. ROGER B. ANDEWELT

Mr. ANDEWELT. One preliminary remark, if I may. I have spent 14 years as a career attorney in the Antitrust Division slowly climbing the rungs of responsibility, and it is truly an honor and a privilege to be here and to be asked to testify before the Subcommittee.

Senator METZENBAUM. We are happy to have you, Mr. Andewelt.

Mr. ANDEWELT. Thank you

Senator METZENBAUM. You have chosen well for your first public hearing.

Mr. ANDEWELT. Nine years ago, Congress dramatically changed the status of the airline industry with the Airline Deregulation Act. Prior to that time, government impeded entry and government impeded price changes in the market.

As a result, if an air carrier thought consumers' interests were not being served and they could enter a market and provide service for those consumers, airlines were forbidden from doing that. In addition, if airlines wanted to increase the number of people they carried by lowering their prices, they could not do it.

In its wisdom, Congress chose to end that process and to have free and open competition to control decisionmaking. The results, as should be expected, were both unexpected and expected.

The unexpected results were precisely how competition would show itself. As a result of being open to the pressures of free and open competition, airline carriers found new and unexpected ways in which to compete. They developed network systems which were not even thought of at the time during regulation.

These network systems, resulting in hub and spoke servicing of markets, resulted in very, very dramatic efficiencies, and these efficiencies permitted service to more cities and at lower prices.

Indeed, during the last two years there have been additional dramatic changes, and the dramatic changes in the industry have focused in a somewhat different area. There have been a significant number of acquisitions and mergers in the industry. The Department of Justice, the Department of Transportation and Congress are all properly concerned about these mergers.

The public has benefited tremendously from airline deregulation and it is very, very important that merger policy be enforced in a way to deter anticompetitive mergers because if anticompetitive mergers are permitted to occur, the public will lose many of the benefits of airline deregulation.

As a result, under the current framework, obviously, the Department of Transportation is the decisionmaker and the Department of Justice provides its opinion, input, and participates before the Department of Transportation.

Though our position is somewhat different than it typically is, I can assure this subcommittee that we participate with every bit of fervor as we do before the courts. We have allocated some of our best attorneys and some of our best economists into this area and

they have been carefully analyzing each and every merger that came about.

The way we have looked at these mergers is through our traditional approach, and this is the approach that we have embodied in our Merger Guidelines. The Merger Guidelines set forth the manner in which we evaluate mergers in each industry, and we think they are appropriately applicable to the airline industry.

Essentially, what we do is define the markets involved, determine who is in the markets, look at concentration in those markets, and if concentration is sufficiently high, we take a look at the structure and performance in the industry to determine whether or not the acquisition is anticompetitive.

Using this approach, we came to the conclusion that city pairs are the proper method of assessing the relevant market. We came to the conclusion that it is proper to view travel from one city to another city as a relevant market for terms of a merger and to assess the effects in those markets.

But we have to include in those markets not only firms that are currently providing service, but, in addition, firms that could quickly provide service. In addition, we had to look to the issue of entry, again, with the notion that we were very, very concerned that mergers do not remove the benefits of free and open competition.

We analyzed each one of these cases, numerous cases, numerous mergers, admittedly, which were before the Department of Transportation, and we came to the conclusion that, with very few exceptions, these mergers did not present potential harm to consumers.

We found most of these mergers were between non-competitors or between firms that were viable or semi-viable and failing firms. Even many of those mergers that were between firms that were currently competing in specific city market pairs—we came to the conclusion that when they were eliminated through the acquisition, they could be easily replaced by other firms.

Therefore, when we took a look at the issue, we came to the conclusion generally that these mergers were not impairing competition. There were a couple of exceptions to this and, as Mr. Scocozza indicated, there were two basic mergers that DOT has finally resolved and that we disagreed on, and those were Republic/Northwest and TWA/Ozark.

We came to the conclusion that those mergers were anticompetitive, and what we differed with DOT on is this issue of entry. Now, it is clear that we believe we are right and the Department of Transportation believes they are right.

On the other hand, it is important to recognize how complex and how difficult the entry issue is. We do not have, as we typically have in many industries, a long record on which to judge performance and structure of the industry because all evidence in the airline industry prior to 1978 is essentially irrelevant because that was a regulated industry.

So when we took a look at the issue of entry, we came to the conclusion that entry was not as easy as the Department of Transportation believed in these two cases, and we differed. On the other hand, we made our pitch to the Department of Transportation. They focused on all the correct issues and they decided them as they saw fit.

Frankly, reasonable people can disagree on these issues. If we had the authority, we would have gone into district court. In district court recently, the Antitrust Division has not been particularly successful on entry issues. These are very, very tough issues.

If and when this jurisdiction shifts from the Department of Transportation to the Department of Justice through the courts, there is no certainty as to how these cases are going to come out. Even if the Antitrust Division goes to a reasonable judge, he can come to the same conclusion that the reasonable Department of Transportation did in those contexts. These are very tough issues and they are not easily resolved under the antitrust laws.

Now, turning to the future, currently the sunset provision will go into effect January 1, 1989. If that date stays where it is, between now and that time we will continue to present our views to the Department of Transportation.

Those acquisitions that we think do not impair consumers, we are going to encourage the Department of Transportation to allow. Those that do impair consumer interests, we are going to encourage the Department of Transportation to block.

[The prepared statement follows:]

STATEMENT

OF

ROGER B. ANDEWELT
DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, MONOPOLY, AND BUSINESS RIGHTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

MERGERS AND COMPETITION IN THE AIRLINE INDUSTRY

ON

MARCH 25, 1987

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to be here today on behalf of the Department of Justice to discuss the competitive impact of mergers and acquisitions in the airline industry. This is certainly a topical issue. The airline industry has experienced significant restructuring since enactment of the Airline Deregulation Act in 1978, and this restructuring has been particularly evident during the past year and a half. In our view, this is not a matter that necessarily should cause undue concern. The recent mergers and acquisitions have not raised the specter of a significant and pervasive threat to competition in airline markets generally in this country and may actually have enhanced competition in what are already highly competitive markets.

That airline markets are now characterized by multifaceted competition is in sharp contrast to the state of the industry prior to the Airline Deregulation Act. Before 1978, the regulatory climate in which the airline industry operated was one in which competition on pricing and entry was severely restricted. As a result, consumers, even on very popular routes, typically had no pricing options. The story of excessive, inefficient service competition during that period is well known. 1/

1/ See, e.g., George W. Douglas and James C. Miller III, Economic Regulation of Domestic Air Transport: Theory and Policy (Brookings, 1974); Bailey, D.R. Graham and D. P. Kaplan, Deregulating the Airlines (Cambridge, Massachusetts: MIT Press, 1985).

The Airline Deregulation Act sparked dramatic changes in the industry, particularly in the manner in which domestic airlines provided service. Airlines generally took advantage of the opportunities afforded them under the Act by radically altering their routes, marketing practices, and pricing structures in order to attract and serve customers.

One structural change that resulted from this competitive environment was the airlines' creation of hub and spoke systems. The airline industry, like other transportation industries, discovered that there were often tremendous efficiencies from establishing networks; airlines realized these gains by creating hubs at one or more airports. The airlines have found that by scheduling flights at those hub airports in banks -- a number of flights come into a hub airport within a short period of time and a number leave a short time later -- they are able to offer passengers from many origins one-stop flights to many destinations. This method of scheduling inbound and outbound flights has enabled carriers to make efficient use of their facilities and to provide service on many previously underserved routes out of the hub airport.

In addition, hub carriers have been affiliating with commuter carriers in many cities to serve smaller markets on an efficient scale, and several have developed multiple hub systems to provide better regional service. Thus, with the development of hub and spoke systems -- a process which has historically entailed a substantial investment of time,

planning and facilities development on the part of the hubbing carrier -- carriers have grown from local to regional or regional to national as they offer passengers an increasing array of destinations on a single carrier.

While the road has not been without some bumps, the evidence appears overwhelming that consumers have benefited tremendously from free and open competition among airline carriers. Today many more people are flying, more and new service is being offered, and passengers have available to them a wide range of low-price options. People who were previously not in a position to afford air transportation are now enjoying the benefits of air travel to the far reaches of this country. All of this has been achieved by freeing the airlines from economic regulation. 2/

Unrelated to deregulation, but also having a profound effect on the industry during the last ten years, has been the development of computer reservation systems (CRS). As this Subcommittee knows, the Department has investigated these systems in the past and participated in regulatory proceedings

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2/ Steven Morrison and Clifford Winston, The Economic Effect of Airline Deregulation (Brookings, 1986). For example, the Brookings study concluded that while the airlines have ceased to serve some locations since deregulation, an even larger number of locations would have lost service if the industry had not been deregulated.

to eliminate anticompetitive aspects of those systems. 3/ On the positive side, these systems have increased the ability of the carriers to respond more quickly to changes in the forces of supply and demand. Many of the newer, but now commonplace discount programs would be difficult if not impossible to market through retailers without CRSs. As a result, more passengers buy tickets and consumer welfare is enhanced.

The competitive process is working, and we certainly want to maintain this competitive structure. This leads to the question: Will the spate of mergers that has occurred in the last year undermine these gains? Our answer to this question is: Generally, no.

The airline industry remains quite competitive, and we expect that it will remain so for the foreseeable future, provided that existing merger law is vigorously enforced. The mergers that have taken place have changed the participants in many markets but, with the possible exception of a comparatively few markets, have not significantly reduced competition in any markets and have likely enhanced competition in many.

3/ See Report of the Department of Justice to Congress on the Airline Computer Reservation System Industry (1985); Comments of the Department of Justice to the Civil Aeronautics Board, Docket 42410, August 13, 1984.

To understand the conclusion that competition has generally not been impaired by these mergers, it is necessary to consider briefly how we at the Department of Justice look at mergers and, in particular, the factors we believe are important in analyzing an airline merger.

At the Department, we begin with the premise that the airline industry is similar to other industries for the purpose of merger analysis. Thus, as in other industries, we consider whether substantial competition between the merging parties will be eliminated by a merger, and whether that elimination will increase the likelihood that prices to consumers will rise significantly after the merger. Such an analysis is necessary because airline mergers and acquisitions are governed by Section 408 of the Federal Aviation Act, 4/ which embodies essentially the same antitrust standard as is contained in the Clayton Act. The basic difference in the antitrust evaluation of the issues is that the Department of Transportation, rather than a federal court, now has decision-making authority with respect to mergers in this industry. Accordingly, under the current system of review, the Department of Justice evaluates each airline merger and presents its views to DOT, either by participation in a DOT proceeding or by letter, where that is deemed appropriate.

4/ 49 U.S.C. § 1378.

Our analysis of airline mergers is derived from the U.S. Department of Justice Merger Guidelines. 5/ The Guidelines describe how we apply the fundamental principles of Section 7 of the Clayton Act and Section 1 of the Sherman Act to mergers.

The key initial steps in this analysis are the definition of one or more relevant markets and the identification of the competitors in those markets. We include in the market any firm currently providing the product or service provided by the parties to the merger, as well as those firms providing substitute products or services to which consumers would turn in response to a "small but significant, nontransitory increase in price." We also include in the market other firms that have existing specific assets that could be easily and economically used to provide the relevant product or service within one year in reponse to a "small but significant, nontransitory increase in price."

After defining the market, and identifying the competitors in it, we determine whether the market is concentrated and by how much the merger would increase concentration. If the market is concentrated, and the merger would significantly increase concentration, we then consider other relevant factors that indicate whether the merger carries a substantial

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5/ 49 Fed. Reg. 26,823 (1984).

probability of significantly increasing unilateral or collective market power -- that is, the ability to raise prices. For example, we consider the likelihood that entry by firms not currently in the market is sufficiently easy to prevent the firms remaining in the market after the merger from raising prices.

In applying the Guidelines to airline mergers, we have generally concluded that the proper relevant markets are city-pair routes on which the merging carriers are competitors, for example, flights between Washington, D.C. and San Francisco, California or between Atlanta, Georgia and Nashville, Tennessee. If a city-pair market is concentrated and the merger would significantly increase concentration in that city- pair, then we consider whether other factors preclude (or facilitate) the exercise of market power in that market. Critical to this part of the analysis are issues such as whether, assuming the merger were to occur, the remaining participants in the market would be able to establish successfully a cartel arrangement, the benefits to be gained by any individual member from "cheating" on such an arrangement by offering lower prices, and the likelihood of detection by the competitors of any such cheating. Another significant issue is the ease with which new carriers can enter the city-pair market or with which existing fringe carriers can economically expand service.

With respect to entry, some economists thought that it could be presumed that after deregulation all domestic airline markets would be highly, if not perfectly, contestable, i.e., that the threat of entry would always prevent anticompetitive price increases. The notion was that planes can quickly and efficiently be shifted from one city-pair route to another and that firms not serving a particular city-pair route would shift to serving the route if prices increased above competitive levels on that route.

Our experience has led us to the conclusion, however, that this is not always the case. At least in some markets, "hit-and-run" entry is not as likely as the contestability theory predicts.

First, in at least certain airline markets, entry is not as costless as simply shifting a plane onto the route, but instead involves substantial sunk costs -- i.e., investments that cannot be recouped if the firm later decides to exit the market. For example, substantial investments in such things as advertising and ground facilities are necessary to establish hubs, and under certain circumstances airlines may not be able to recoup their investment if they decide to terminate operations at a hub airport. Second, for "hit-and-run" entry to be profitable, under the contestability theory, the incumbent must not be able to respond quickly to the entrant's pricing initiative. By contrast, incumbent airlines are often

able to respond almost instantanteously to a new entrant by lowering their prices.

Thus, the likelihood of new entry into a market in which a merger has eliminated a competitor is essentially a factual issue, the answer to which can vary from case to case. Moreover, the time required for new carriers to enter a market is relevant. If, for example, entry into markets by constructing a new hub is not impossible but would take an extended period of time (two years, for example), the interim loss of consumer welfare can be substantial and should not be tolerated.

The inquiry into entry should focus on the factors that an airline considering entry into the affected market would take into account when making its decision. These include such factors as constraints on the availability of take-off and landing rights (slots) or ground facilities at certain airports, the need to construct a hub in order to compete effectively, and governmental restrictions on international flights.

Using the Guidelines' analytical approach to mergers, the Department of Justice opposed DOT approval of three mergers that we concluded were anticompetitive: Northwest/Republic, TWA/Ozark, and United's acquisition of Pan American's Pacific Division. We also pointed out that certain aspects of Texas Air's acquisition of Eastern might have been anticompetitive had Texas Air not agreed to sell to Pan Am sufficient gates and

slots at National and LaGuardia Airports to enable Pan Am to offer competing "shuttle" service on the Boston - LaGuardia - National routes. With respect to these mergers, DOT approved the first three and ordered Texas Air to sell off additional slots and gates before approving the Texas Air/Eastern merger.

With respect to two of the three mergers that DOT approved over our objection, our differences were due to different conclusions concerning the likelihood of new entry. In the case of the Northwest/Republic and TWA/Ozark mergers, we concluded that for several reasons, entry was unlikely to prevent the merger from having anticompetitive effects on a number of city-pair markets. In the absence of finding physical entry barriers, however, DOT concluded that entry was sufficiently easy to ensure that these two mergers would not have anticompetitive effects. The entry issue is a very complex one; it involves difficult predictions as to future actions, as to which reasonable men and women can disagree.

In the Pacific Division case, both agencies agreed that entry would be difficult, but we differed as to the level of concentration that indicates market power in the airline industry.

Notwithstanding our differences with DOT's findings in these three cases, we do not believe there is cause for concern about the current state of competition generally in the industry. The mergers on which we disagreed with DOT involved a limited number of city-pair markets. Many other airline

markets changed significantly due to mergers but have not been adversely affected. Generally those mergers involved carriers that were not significant direct competitors. The purpose of those mergers has often been to consolidate the carriers' complementary operations so as to be able to offer opportunities for increased efficiency and service. In other mergers involving competitors, the well-established "failing firm" doctrine allowed the approval of an otherwise anticompetitive merger. Thus, in the most recent past, we have transmitted to DOT our recommendation to approve the merger of Delta Air Lines and Western Airlines, Texas Air and People Express, Alaska Airlines and Jet America Airlines, USAir and Pacific Southwest Airlines, American Airlines and Air Cal, and Southwest's acquisition of Muse and United's acquisition of Frontier (which was never consummated). DOT has approved them all.

That is the past, what about the future? We are generally optimistic here as well. There are many encouraging signs in the industry. There has been a recent trend among carriers, both through mergers and internal expansion, to have more than one hub. Among the major carriers that now operate hubs in more than one city are United at Chicago (O'Hare), Denver and Dulles; Delta at Atlanta, Cincinnati, and Dallas/Ft. Worth; USAir at Pittsburgh and Philadelphia; Piedmont at Dayton, Baltimore, Charlotte and Syracuse; American at Dallas/Fort Worth, Chicago (O'Hare), Nashville and Raleigh-Durham;

Northwest at Minneapolis-St. Paul, Detroit and Memphis; Continental at Denver, Houston, Dulles and Newark; Eastern at Atlanta, Philadelphia and Kansas City. Expansion has enabled the current carriers to augment and strengthen their networks to offer passengers in affected markets pricing and service alternatives they did not previously have. It is likely, for example, that these developments will increase competition on some nonstop routes as individual carriers increase the number of flights from their hubs to other hubs. In addition, in virtually all areas of the country, there will also be increased competition among hubs for connecting flights.

In conclusion, sound antitrust enforcement is crucial to maintaining the many benefits of deregulation. As we look at each new airline consolidation we are continuing to refine our knowledge and information about the way that competition works in this vital and ever-changing industry. This will enable us to do a responsible job in the future at DOT and, ultimately, in the courts as in 1989 they assume under Section 7 of the Clayton Act the decisional role now assigned to DOT. Court review could come sooner if Congress passes the administration's plan to sunset -- not to transfer -- DOT's merger review powers before the scheduled January 1, 1989 sunset date. We support that plan. We echo Secretary of Transportation Dole's comments when transmitting the sunset legislation that treating the airline industry uniquely with respect to mergers is no longer justified in light of the

"maturity and adaptability of the highly competitive domestic airline industry." Secretary Dole went on to say, "Experience has demonstrated that the procedures of the Clayton Act are far better suited to the needs of a competitive industry than the prior approval requirements contained in the Federal Aviation Act." 6/ We agree. It is time to treat the airline industry in precisely the same way as other U.S. industries; any differences are not significant for the purpose of merger analysis.

In that regard, we are aware, Mr. Chairman, that you have recently introduced S. 806, the "Airline Competition Act of 1987." We are at present studying your bill and would be happy to submit a statement of our views on it for the record as soon as possible.

Mr. Chairman, that concludes my prepared remarks. I would be pleased to answer any questions that you or the other members of the Subcommittee have at this time.

6/ Letters dated March 10, 1987, addressed to the President of the Senate and the Speaker of the House of Representatives transmitting a bill "To amend the Federal Aviation Act of 1958 to advance the scheduled termination date of the Essential Air Service Program, and for other purposes."

Senator METZENBAUM. If I understand your position, you would support accelerating the date of that sunset.

Mr. ANDEWELT. The Administration is on record and continues to support acceleration of the sunset of the DOT merger authority, yes.

Senator METZENBAUM. In other words, the bottom line of that would be to transfer jurisdiction from the Department of Transportation to the Antitrust Division?

Mr. ANDEWELT. Yes, that is right.

Senator METZENBAUM. And I think that is the position of Mr. Scocozza as well.

Mr. SCOCOZZA. Yes, it is, Mr. Chairman. We have not gotten a formal piece of legislation to the Congress, but in the closing days of the last Congress we were supporting amendments to that very effect within the Senate and the House.

So we would support the immediate sunset of the Department of Transportation's responsibility under 408 and transfer over to the Department of Justice within a reasonable period of time necessary for an effective transition, and the termination of pending cases.

Senator METZENBAUM. And the termination of pending cases, or switching the jurisdiction with respect to pending cases over to them?

Mr. SCOCOZZA. Well, I guess from a procedural standpoint, I would imagine that the Department would support the freezing of existing cases and the concluding of those, rather than making them start a record all over again because it is a very, very expensive process.

There are three cases pending at the Department now and they are on a six-month time frame, so I would imagine that if legislation were moving quickly, a lot of carriers would probably wait until the sunset took place.

Senator METZENBAUM. In addition to sunsetting the merger authority, do you also support sunsetting the Department's authority to immunize agreements under Section 412 other than for foreign air transportation?

Mr. SCOCOZZA. Yes, Mr. Chairman. That has been our consistent position.

Senator METZENBAUM. And as I understand it, your position is that you would support an immediate sunsetting?

Mr. SCOCOZZA. Of 408. With respect to 412, we put a caveat in there because there are some procedural and administrative issues we think we need to resolve. A lot of these cases, Mr. Chairman, were approved many years ago and still continue, and I think it is necessary for the Department to make an inventory of all those, make sure the parties understand that they are going to be exposed.

I think a lot of carriers do not even know they have a lot of these things in effect. So, from a substantive standpoint, we would support the sunset as soon as is administratively possible. How soon administratively possible is, I really do not know.

I think formally we have said we can let that go until 1989, but that would certainly be the subject of Congressional hearings and we would try to give you the best evidence we had with respect to how long it would take to terminate.

Senator METZENBAUM. The Chair and others have expressed concern about the Department of Transportation's permitting the scheduling talks to be going on because it provides the camel's nose under the tent with respect to antitrust enforcement generally.

Is the Department prepared to work with this Committee to phrase the language in such a manner that we can move? We are prepared to move promptly with respect to the matter of changing the jurisdiction, and I would hope that Congress generally would feel that way. What would be the Department's position on that?

Mr. SCOCOZZA. We would certainly work with the Committee, Mr. Chairman. As to the scheduling talks, if you asked me this morning to come up with a hypothetical of how we could use 412 between now and 1989, I probably could not come up with a realistic hypothetical other than these talks.

In this regard, we have said this would be the last time that we would probably ever use this authority with respect to scheduling at individual airports, because we are conducting a major investigation of airline delays which will provide long-term solutions.

With respect to the antitrust immunity that we did confer under 412 for those discussions, if agreements result and we believe there will be some agreements, those have to be submitted to the Department of Transportation for review, with participation by any interested parties, including the Department of Justice.

If any of those agreements appear to have anticompetitive impacts, we have the full authority to disallow them. So, if and when agreements are submitted to us, we start from scratch and examine these to determine whether or not they are consistent with our antitrust responsibilities and guidance. If they are not, they will be turned down; if they are consistent, they will be approved.

Senator METZENBAUM. Do I understand you correctly that the bill that I have introduced would be supported by the Department of Transportation to shift the jurisdiction over to the Antitrust Division?

Mr. SCOCOZZA. Mr. Chairman, I do not think I could give you a positive or a no on that right now, but I can tell you the substance which you outlined in your opening remarks I see as completely consistent with positions we have held before.

Now, I think we would probably have comments with respect to timing. We would probably have comments with respect to technical drafting, but at this particular point we do not have an official green light in terms of the legislation. But I will promise you we will do our best to get back to you as soon as we can. I do not see a problem with the substance which you have outlined this morning.

Senator METZENBAUM. And, Mr. Andewelt, is that pretty much the position of the Department of Justice as well?

Mr. ANDEWELT. Yes, it is; yes, it is.

Senator METZENBAUM. So that you support the general thrust of my legislation; you may want to be involved in some detail provisions. Is that correct?

Mr. SCOCOZZA. That is correct.

Senator METZENBAUM. And that is correct from you, Mr. Andewelt, as well?

Mr. ANDEWELT. Yes, it is.

Senator METZENBAUM. Mr. Scocozza, the U.S. Air/Piedmont merger is pending before you. One of my principal concerns is the impact of that merger on the city of Dayton. U.S. Air has its main hub in Pittsburgh, just 250 miles away.

In Dayton, Piedmont has a large hub that employs 900 people and serves thousands of passengers each day. The service it provides has been critical to Dayton's economy and to the growth of big industry and small business alike.

Does the Department intend to consider the fate of the Piedmont Dayton hub as it reviews the proposed merger?

Mr. SCOCOZZA. Mr. Chairman, from a general sense could I state that any anticompetitive impacts that would be a part of any merger application would get full Department review. But, if you please, I would rather not comment on the substance of that application because I am one of the decisionmakers in that particular merger, so I am really not at liberty to respond to the specifics of a pending case. I could with any case we have decided, but I would like to defer a response to that because that particular proceeding is pending.

Senator METZENBAUM. I am sure that the members of this committee as well as the Congress are very much concerned about that pending merger. My colleague who sits next to me here from South Carolina—Piedmont serves South Carolina. I think that many of us are very concerned as to whether that pending merger will affect the kind of service that is presently being rendered to many cities throughout the country.

I know that I, for one, have a major concern about the city of Dayton, which has excellent service now, a tremendous number of employees, 900 employees, and I want to make it clear that that is a problem because it is more than the 900 employees. It is the whole industry that is involved in that community and whether or not they can move in and out when they want to.

So I would say to you that I think that as you look at these mergers, you really have to take into account what the impact will be on the social life of that community and the economic life of that community.

I do hope that the Department of Transportation, while it still has this jurisdiction, will give what I think is more heed to that issue than it has given to it in the past.

Mr. SCOCOZZA. Mr. Chairman, I can say from a very general sense that when we look at a merger, we do look at every conceivable city pair served by the applicants in the individual merger. So every anti-competitive impact, every market share will be reviewed and completely analyzed. I give you my assurance that that is our policy and we will do that with every pending application.

There is some difference in approach between the Department of Justice and the Department of Transportation as we analyze every individual market share of every individual city pair.

With your permission, I would really like to put this segment of my testimony this morning in the record for the public to have.

Senator METZENBAUM. Your entire statement will be included in the record.

Mr. SCOCOZZA. No; I mean in the record before the Department in this merger proceeding.

Senator METZENBAUM. You want to put what into the record?

Mr. SCOCOZZA. The discussion we have had here, because you have given your personal views on a particular merger that is pending before my agency.

Senator METZENBAUM. And you want to put that into the record of the agency?

Mr. SCOCOZZA. I would like to have permission to do that so that all applicants and parties to the merger——

Senator METZENBAUM. I could not be more pleased about that. [Laughter.]

And I would guess that my colleague to my left would not disagree with that, as well, because Piedmont is, I think, a major service carrier for South Carolina.

Senator THURMOND. I am to your left at this hearing.

Senator METZENBAUM. My colleague is to my left at this hearing, but it is a matter of perspective. He is to my right as you look at us seated up here. Once in a while, he is a little bit to my right on a few other issues. [Laughter.]

Senator THURMOND. Thank you for clarifying that. [Laughter.]

Senator METZENBAUM. In the last two years, the Department of Transportation has approved three mergers over the opposition of the Department of Justice—TWA, Northwest, and the sale of Pan Am specific routes. I do not want to get into the facts of those cases, but I just have a simple question.

Why did Transportation approve these three acquisitions over the objections of the Department of Justice?

Mr. SCOCOZZA. As I mentioned earlier, Mr. Chairman, we have a difference in approach in the way we look at individual market pairs. For example, the Department of Justice, and I certainly defer to them to be more specific, looks at competition in between, let us say, St. Louis and Knoxville, Tennessee, in terms of all non-stop service between those two points, and also looks at other service, but predominantly looks at the non-stop service.

When we look at the competitive atmosphere between city pairs, we look at not only non-stop service; we look at direct service, one-stop service. We look at connecting service; we look at commuter service. We feel that we have to look at the whole complex of opportunities between two city pairs and then draw a conclusion.

I think it is fundamentally, on those two particular cases, a difference in approach on how we analyze competition between market pairs.

Senator METZENBAUM. I would like to yield to my colleague and the ranking member of this committee, Senator Thurmond.

Senator THURMOND. Thank you, Mr. Chairman. Mr. Chairman, I have three committees going on this morning and I can be here part of the time. I am sure you will understand the situation.

Mr. Chairman, we are all aware of the large number of recent mergers in the airline industry. Those mergers are like mergers in other industries. Some of them produce efficiencies and benefits for consumers, while some of them eliminate competition and raise antitrust concerns.

The principles applied to airline mergers are the same as those applied to other types of mergers, but airline mergers are reviewed under a separate regulatory system from most other mergers.

Mr. Chairman, I understand that you have introduced legislation within the past week which would alter the jurisdiction over airline mergers. I will be interested in hearing the views of the witnesses who testify today on this subject.

Mr. Chairman, I think it is appropriate for us to inquire into the review of airline mergers and I commend you for holding a hearing on this timely topic, and I want to thank all of the witnesses for their contribution to our deliberations. If I do not get to hear all of the witnesses testify, I will arrange to read the record because I think it will be helpful to us.

Do you pronounce your name Scocozza?

Mr. SCOCOZZA. That is exactly right, Senator.

Senator THURMOND. I made a good guess, did I not?

Mr. SCOCOZZA. I was about 25 before I could do it right. [Laughter.]

That is very good on the first try.

Senator THURMOND. I just want to say that I want to commend you and the Transportation Department, and the Justice Department, too, for the good job you are both doing. The fact that you have not agreed on all questions all the time could be a wholesome thing. In other words, I do not think there ought to be a direct edict by the Administration as to what is done, but to use your judgment in those matters.

Now, there is one question I would like to ask of the Justice Department. I believe the Justice Department advised the Transportation Department that three of the recently proposed airline mergers may violate the merger law, but the Transportation Department disagreed and approved the transactions.

How would the Justice Department have cured the perceived anticompetitive effects of those mergers?

Mr. ANDEWELT. Had the authority been with the Department of Justice, what we would have done is gone to district court and tried to stop the acquisitions, unless and until a fix that would take care of the anticompetitive problems could be arranged.

In terms of the Pan Am acquisition, we indicated to the Department of Transportation that a fix was possible and our objection to the acquisition was predicated exclusively on the willingness of the firms to spin off a gateway to Japan.

With respect to the TWA acquisition, we indicated that it would be appropriate to permit the acquisition to go ahead so long as TWA sold an appropriate number of gates at the St. Louis Airport.

With respect to the Northwest acquisition, we would have disapproved it; we did not see a fix.

Mr. SCOCOZZA. Senator, if I might add, we did agree in substance with the Department of Justice on the Pan Am/United transaction, but we felt in the context of that proceeding we did not have a sufficient amount in the record to make a decision on which gateway to, in fact, take away from Pan Am.

Subsequent to the approval of the Pan Am/United transaction, we have opened a proceeding with respect to Seattle. Carriers who are competing before the Department of Transportation vie for

that gateway, and United is also free to explain why they believe they should keep it. But in terms of the substance that Justice put before the Department, we agreed, in general, but we just did not believe procedurally that it was right to make a quick decision on which gateway to take away from the proposed transaction. We, in fact, have a proceeding going on right now which may, in fact, result in giving an additional gateway to another carrier and taking it away from United.

Senator THURMOND. The bill that Senator Metzenbaum has introduced is very short. It provides that, "Notwithstanding any other provision of law, the Clayton Act and the Sherman Act shall apply to the interstate and air overseas transportation industry."

Any question about that? Is there any objection to the wording of that paragraph?

Mr. ANDEWELT. We have not yet formed a position with respect to the precise wording, but we do believe that certainly with respect to merger authority under 408, an immediate sunset is appropriate.

With respect to exemption authority under 412, the Department of Transportation has essentially taken the position that they want to assess exactly how much time they need to clear up their backlog and permit the carriers to rearrange any steps that they are taking consistent with their prior exemptions.

Senator METZENBAUM. I do not have any problem with that.

Mr. ANDEWELT. We think that is appropriate.

Senator METZENBAUM. I am perfectly willing to work out language with you.

Mr. ANDEWELT. Yes.

Mr. SCOCOZZA. I think there would be a lot of companies, Mr. Chairman and Senator, who would probably want to apply to the Department of Justice for business review letters to continue any activity they believe they may be exposed to as our authority sunsets, so it is purely an administrative position.

Senator THURMOND. Now, this bill also provides that "except as provided in Subsection (b), this Act shall be effective on the date of enactment. All orders finalized prior to the date of enactment of this Act shall not be affected by the Act."

As I understand it, in principle, you both agree that you probably will not oppose the bill, but you want to work out some details, such as the time it will take effect and other details, and I am sure Senator Metzenbaum is such a reasonable man that he will work with you on that and there will not be any question about that.

Senator METZENBAUM. I certainly will.

Senator THURMOND. And so I think we can all get together on it, maybe. I can understand your situation, since you are a judge in this matter he referred to a few moments ago, that you are not at liberty to express yourself, and I think you are taking the right stand there because if you have got to sit as a judge, you cannot express yourself now because you have got to hear all the facts and then make a determination based on those facts, as you see them.

Senator, I do not think I have anything else at this time. Thank you very much, and I have another meeting and I may have to leave.

Senator METZENBAUM. Well, I appreciate your finding time to join us and I look forward to working with you in connection with this bill as well as others.

Let me just have one more question of you.

Mr. SCOCOZZA. Sure.

Senator METZENBAUM. You talked about the question of consumer complaints and whether deregulation has worked. I want to show you that chart over there which indicates, between 1985 and 1986, how consumer complaints have increased.

Now, it is fair to point out that service, I think, increased nine percent between those two years, and so you have to make a little adjustment for that fact. But as you can see, on cancellation and delays, there was a very substantial increase. With respect to refunds, there were a number of complaints, and with respect to ticketing and boarding, that increase is very substantial, as well as with respect to customer service. The only place you do not have as big an increase is in the area of bumping.

Would you care to comment on that, Mr. Scocozza?

Mr. SCOCOZZA. Yes, Mr. Chairman, thank you. I do not want to hedge the issue. There is certainly some consumer discontent out there, but I really would like to put it into context.

The last six months of 1986 found that approximately 50 percent of our airline industry—50 percent of more than 400 million passengers and 50 percent of all of the employees in the airline industry—were touched by a merger.

When you put it in that particular context, to recognize that there has been an actual 14-percent increase in complaints before the Department of Transportation, coupled with a 10 percent increase in the actual amount of transportation—36 million more passengers carried last year—the figures are pretty consistent with the growth.

I would say the truer indication of passenger discontent or acceptance is probably with complaints that actually go directly to the carriers, of which we do not have copies. I think passengers first go to the carriers before they come to the Department of Transportation.

Another thing that I would like to bring up, Mr. Chairman, is the fact that in 1977 the Civil Aeronautics Board had about 18,000 complaints filed. Last year, we had 16,000 complaints filed, plus or minus, and, in 1978, 23,000 complaints; 1979, 35,000 complaints.

I bring those figures up because in 1977 our industry was about half the size it is today. We have an average complaint of about 2.26 per 100,000 people. If, in 1977, the complaints were even higher or about the same as they are now and the industry was half the size. That means that the consumer complaints per 100,000 were twice as much before deregulation.

But there is no question about the fact that people, passengers and companies who were touched by mergers did face a period of confusion at the end of the year as they started to integrate their systems. For instance, people thinking they were going to get on an Eastern plane and seeing a Continental logo on the plane, going back to the ticket counter and saying there might be a mistake.

Those kinds of things were occurring, we found, for the large part in October, November and December of last year. So, I would

not make light of the fact that there has been an increase in consumer complaints. We, in fact, expected them as a result of all of the merger activity.

Senator METZENBAUM. Well, staff tells me that I might get into some extended discussion with you about the fact that prior to deregulation, complaints went first to CAB and now DOT is the last resort. But, frankly, in the interests of time, I am going to waive that. We will do it by mail if we deem it necessary.

I am very happy to see Senator Arlen Specter has joined us. Senator Specter, do you have any questions or comments?

Senator SPECTER. Thank you very much, Mr. Chairman; a question or two.

On the issue of cancellations, is there any evidence that there is any practice of cancellations when an airline may find on a local commuter run, for example, that they have an insufficient number of passengers to make it a profitable run so that they cancel the flight?

Mr. SCOCOZZA. Mr. Chairman, we have had a lot of complaints before the Department on economic cancellations. We have had some anecdotal information. We are at the present time doing a computer run of 88,000 randomly selected flights, looking at these randomly selected flights and looking at whether or not they were canceled and what the reasons were. I would probably be better able to respond to that question for the record on the specifics of the outcome of that computer run which is not yet complete.

Senator SPECTER. It would not be appropriate, I take it, for a company to cancel a flight because they have an insufficient number of passengers to make it profitable?

Mr. SCOCOZZA. If there were a pattern of that, Mr. Chairman, I would suggest that a carrier may be in violation of their certificate to provide service to the public and could be subject to prosecution.

If it happened on a one-time basis and the passengers were adequately taken care of, compensated by the carrier, I do not know if that would be an instance that would require prosecution.

But at the present time I do not believe—and I would like to submit a detailed general counsel's memo for the record—that we can prosecute a carrier for canceling a flight.

Senator SPECTER. Well, my question goes to the propriety of an airliner canceling it because it is not profitable. I do not think that there is any way that you have adequate compensation for a passenger.

I personally have been on flights which have been canceled. The question has arisen in my mind as to whether they were canceled because there was an insufficient number of passengers, and my question to you is would it be appropriate, even in a single instance, for an airline carrier to cancel a flight because that particular flight was unprofitable.

Mr. SCOCOZZA. At the present time, Senator, I do not believe it is illegal. If there is a practice, then we will prosecute the particular carrier. And I agree with you; if I have to make a wedding or a speaking engagement and my flight is canceled and I cannot make it, I do not think I can be compensated.

Senator SPECTER. How about a vote? [Laughter.]

Mr. SCOCOZZA. Well, that is another thing that you cannot be compensated for.

Senator SPECTER. Well, it is my thought that it is not justifiable for a company to cancel a flight because it is unprofitable. The company establishes a certain flight schedule. They make a determination based on their evaluation of a market; they schedule a flight.

Customers rely upon the schedule, customers book passage, and it is my thought that the customer ought to be able to rely on that flight.

On the standard as to whether it is appropriate for a cancelation because that particular flight is unprofitable, I would think that it would not depend upon whether there is a single flight or a pattern as to the propriety of that practice.

A pattern may show that that is the reason and it may be that you would require more than a single violation as a matter of discretion in terms of taking enforcement action. But I am interested in your own view as to whether it is proper for an airline to cancel even a single flight because it is unprofitable.

Mr. SCOCOZZA. From a substantive perspective, Senator, and I would like to respond directly to your question, I agree with you. I do not think it is appropriate to cancel a flight. If you are in business to provide service, you are expected to provide it. It happens across our industry.

Now, an appropriate response is not simply to sue the carrier, because that is a difficult thing for an individual passenger to do. Part of our investigation is to determine the magnitude of the problem, to decide what kind of remedies would be in order.

Should we do a rule to make this illegal and hold carriers accountable for cancellations and require certain administrative remedies, or should we change our enforcement approach with respect to economic cancellations?

On the other side of the problem, I do see, from an enforcement perspective, a carrier indicating that it was not satisfied with landing gear. Of course, if there is a mechanical failure, there is no penalty under existing rules and regulations for cancelation of a flight. I do not know if we would see more mechanical failures if they were, in fact, economic failures. That is part of our ongoing investigation now to get to the bottom of it.

Senator SPECTER. Well, you have moved substantially beyond my question. I think it is very useful to have a statement made by you that it is improper for a flight to be canceled for economic reasons.

If that standard is firmly established and is publicized, then I think it has merit all by itself. Your saying it in this proceeding will come to the attention of many, many people and will be a deterrent for the cancelation.

It is a separate question as to how you enforce it, and there when you talk about a pattern, I think you are talking about a correct approach.

Mr. SCOCOZZA. Exactly, Senator.

Senator SPECTER. And if you find that a certain carrier has mechanical failures every time there are two or three passengers booked, then you may be able to draw a conclusion of violation.

Let me raise one other question, if I may.

Senator METZENBAUM. Let me just say one thing to my colleague. This afternoon, I will introduce a bill on that very subject, actually called the Airline Consumer Rights Act, which will specifically provide that the Secretary of Transportation is required to promulgate a rule that no airline carrier may cancel a flight for economic reasons unless reasonable effort has been made to notify each passenger at least 24 hours in advance and make available to each passenger within a reasonable time a protection of that flight.

So I just would say to my colleague he might be interested in that provision, as well as the others, and may very well be interested in becoming a cosponsor.

Senator SPECTER. Well, that bill may be unnecessary, Mr. Chairman. We have just had the Assistant Secretary for Policy of the Department of Transportation say that it is illegal. Maybe you do not need a bill, maybe just a regulation; maybe we will just have one.

How about that, Mr. Scocozza?

Mr. SCOCOZZA. Well, Senator, I said I believe it is improper and agree with you in terms of the substance of your argument.

Senator SPECTER. You do not think your statement rises to the level of a regulation yet? [Laughter.]

Mr. SCOCOZZA. In terms of our investigation, it could, in fact, turn into a hard enforcement policy and/or a regulation, making it a per se violation of our consumer regs.

Senator SPECTER. Well, I am about to cosponsor Senator Metzenbaum's bill, then. [Laughter.]

Let me raise one other subject briefly here.

Senator METZENBAUM. Sure.

Senator SPECTER. And this is the issue of bumping, which is an extraordinarily problematic matter for passengers everywhere both in terms of those who are bumped and those who live under the fear of being bumped and those who arrive very early so that they will not be bumped. It is really a major, major problem.

It may be that there has been a solution with the good offers which are made when there is extra ticketing where you offer a free ride anywhere in the country, and so forth, because I have seen people rush to take the offers when the bumping and the overticketing exists.

But has consideration been given regarding the reservation as a contract which obligates the passenger as well as the airline so that when the airline is fully booked, they have the commitment from the passengers that the fare will be paid unless the passenger gives requisite notice, perhaps, six hours in advance or perhaps twelve hours in advance, whatever a reasonable time may be, so that the contract runs both ways?

The airline has an appropriate protection and the passengers know that if they have a ticket that they are going to be accommodated. Why should it not work on the regular principle of contract law?

Mr. SCOCOZZA. For the most part, Senator, it does. If I could just cut the question into two pieces. At one time there was a proposal before the Civil Aeronautics Board to, in fact, require a passenger to pay a penalty if they did not show up or to forfeit their particular ticket. There was a tremendous amount of activity and public

interest against such requirements on the passengers. But, of course, that is the responsibility of the carrier. If they give you a reservation, they have an obligation to sell you a ticket if you show up in time and put you onboard the plane. So it only works one way.

Recently, carriers, through the market process, have come up with something we call a theater ticket. You buy a ticket for a flight and you have to be on the plane. If you do not show up, you lose the particular amount of money you paid for what we call the theater ticket.

Now, of course, the carriers have to make sure they adequately help the passenger understand what they are, in fact, buying; that they cannot pay for it and then not show up and get a refund.

Senator SPECTER. How widespread is the theater ticket practice?

Mr. SCOCOZZA. That is becoming a very popular tool in international travel with inexpensive fares. With a no-show, you have a tremendous amount of economic loss for a carrier. A flight to Rome—if there is an economic no-show, that may be as much as $800 or $900 loss to one of those particular carriers.

They may sell a theater ticket for $500 or $600. I first saw these things being incorporated into international fare proposals. Now, they are becoming more and more popular in the United States, and they are pretty low, discounted fares.

The other side of your question with respect to bumping, under the rules and regulations at the Department of Transportation, a passenger has a right, if they are holding a ticket and if they present themselves at least 15 to 20 minutes—I am not sure of the exact time; I will provide that for the record—before the flight takes off, to a seat on that aircraft.

An example is myself. I was going to be bumped on a flight to Hartford, Connecticut. I was speaking at a black tie; I had to get to Hartford. I could not drive; there was no other way, and I demanded a seat on that particular flight.

U.S. Air had to go on board and start bidding for people to get off the plane to give me a seat, and they eventually paid somebody $600 to get off the flight so that I could fly to Hartford.

I do the reverse when I fly on vacation to the Caribbean. I get in the back of the line and pray that I will be bumped because I know that Eastern or TWA, or whoever, will probably give me a free ticket back. [Laughter.]

So there are times when I would love to be bumped when I am on vacation and would like to have a free ticket. But there are times when you absolutely have to be somewhere and the condition is you have presented yourself and your ticket at least 20 minutes or 30 minutes before boarding. Then the carrier must find you a seat and often does so by offering inducements to those on board. You know, if the bidding has to be $2,000, so be it. But for the most part we see people, for a free round trip ticket on their systems or $200 or $300, getting off a flight.

Senator SPECTER. Well, I have seen that with regularity, too. My question is are there any instances, to your knowledge, where even with the bidding, however high it goes, the airline is unable to find a passenger in his or her seat to relinquish the seat so that a tick-

eted passenger who insists on traveling can get a seat, any case at all?

Mr. SCOCOZZA. Out of the 13,000 complaints that came in, to the best of my knowledge, I am not aware of a pattern or of a specific instance—I am sure I will now get a few in the mail—where a passenger was told that no one aboard a 747 or a 727 would get off for compensation to give them a seat.

Senator SPECTER. Well, I would be interested in that, if you would provide that as a follow-up, if there are any cases or to what extent there are situations where someone cannot get a seat even when the bidding is undertaken, because that is a major problem.

It may be that the bidding is taking care of it or it may be that there are so few circumstances that there need not be any remedial action. But I would be interested to know how many cases there are where even in the face of the bidding, a ticketed passenger cannot get a seat on demand.

Mr. SCOCOZZA. Out of the largest aviation market in the world, Senator—414 million people were carried last year—40 percent of the world's aviation took place in the United States, I would imagine there are some instances. If we can find them, I will be glad to pass them on to you.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Specter.

Mr. Scocozza, I have one last question for you. You book a flight on Northwest and you wind up on some small airline; you book a flight on some other major airline and you wind up on some small airline.

Your regulations do not now cover planes with less than 60 seats. Do you not believe that they should? A passenger who goes to the airport normally does not know that. He goes to the airport, gets on a plane; there is no food, there are no toilet facilities. Suddenly, they are on a plane that he or she would not have really been willing to ride on, had they known about it.

My question to you is why do not the regulations cover all scheduled airline flights?

Mr. SCOCOZZA. They do, in varying degrees, Mr. Chairman. With respect to the shared code operators, for an example—I am not making a point of this particular airline, but just for the hypothetical before us—American Eagle, which is a commuter affiliate with American Airlines—U.S. Air has the Allegheny Commuter, and the Delta Connector with Delta Airlines.

Up until 1985, the public was not really sure if they were going to be getting on a commuter or a jet carrier. In that particular year, we promulgated a rule that required an asterisk on the computer screen and a note in the official airline guide and a requirement that the person who sells the ticket, whether it be the travel agent, the air carrier, or a third party who sells the ticket, has an absolute requirement to advise the passenger that you are flying, for example, American Eagle, which is a commuter air carrier; make sure you go to the commuter terminal where you will fly to, say, Pittsburgh and connect with an American flight that will fly non-stop by jet to St. Louis. They now have that requirement.

When we find violations of that, we can either prosecute the carrier or require some compensation to the passenger.

Senator METZENBAUM. Mr. Scocozza, I do not want to belabor the time of this hearing, but I would like to ask you, in your responsible position as Assistant Secretary for Policy and International Affairs, to ask one of the people in your employ to make 100 or 200 random calls, and my guess is you will find that that rule is more violated than conformed with.

Secondly, I do not think it is enough to say that you are flying American Eagle, unless you say "which has 22 seats, does not have toilet facilities; no food or drink is offered on the plane," or whatever else are the limitations, and it is a prop plane or whatever the case may be.

Otherwise, you do not know about it and, frankly, I think that there is a responsibility to put the passenger on more notice than now is being received.

Mr. SCOCOZZA. I would be glad to provide that information to you, Senator.

Senator METZENBAUM. Thank you very much.

Mr. SCOCOZZA. And I would imagine there are, in fact, instances where the rule is just not being adequately followed.

Senator METZENBAUM. Maybe then we have to figure out a way to implement the rule more strongly than it is presently being implemented.

Mr. SCOCOZZA. A more aggressive enforcement policy on that.

Senator METZENBAUM. Maybe it has to say right on the face of the ticket, what sort of plane will be flying and what facilities will be provided.

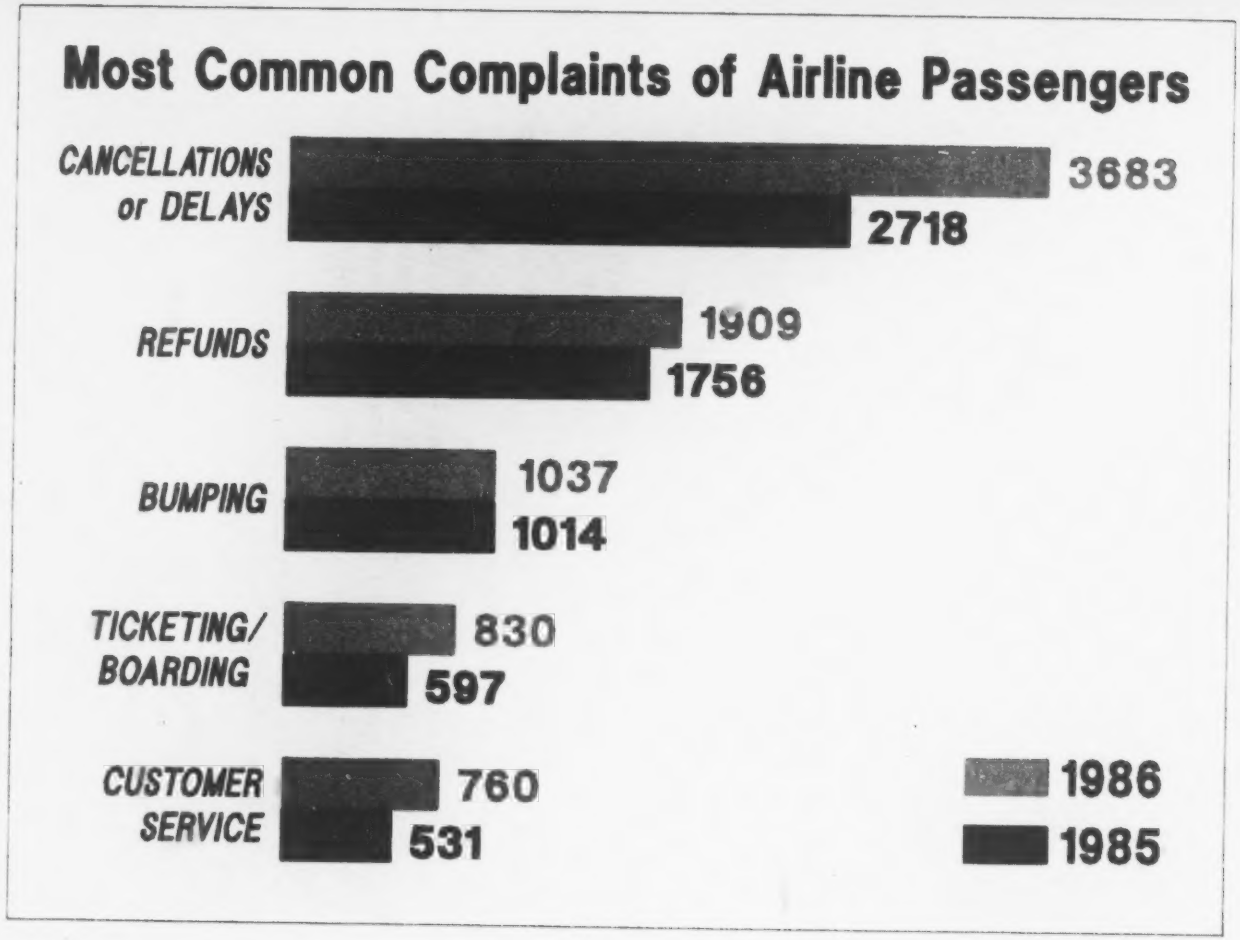
Thank you very much, Mr. Scocozza, Mr. Andewelt. We are prepared to work with you. We hope to move this legislation very promptly.

Mr. ANDEWELT. Thank you very much.

Mr. SCOCOZZA. Thank you, Mr. Chairman.

Senator METZENBAUM. The Chair will include a copy of that chart in the record at this point.

[Chart follows:]


Most Common Complaints of Airline Passengers
CANCELLATIONS or DELAYS
3683
2718
REFUNDS
1909
1756
BUMPING
1037
1014
TICKETING/ BOARDING
830
597
CUSTOMER SERVICE
760
531
1986
1985

Senator METZENBAUM. Our second panel is Professor Alfred Kahn, Cornell University; Cornish F. Hitchcock, Public Citizen; and William Winpisinger, International President of the Machinists Union.

Good morning, Professor Kahn.

Mr. KAHN. Good morning.

Senator METZENBAUM. We are happy to welcome you back again. Mr. Winpisinger, nice to see you. And, Mr. Hitchcock, we are happy to have you with us, sir. We do have a five-minute rule; I think you have been advised of that before because both of you have testified, and I am not sure about you, Mr. Hitchcock. But the light will go on at five minutes and we will ask you to conclude your remarks.

Professor Kahn, do you want to proceed?

STATEMENT OF A PANEL CONSISTING OF ALFRED E. KAHN, PROFESSOR OF POLITICAL ECONOMY, CORNELL UNIVERSITY; WILLIAM W. WINPISINGER, INTERNATIONAL PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; AND CORNISH F. HITCHCOCK, LEGAL DIRECTOR, AVIATION CONSUMER ACTION PROJECT

Mr. KAHN. Thank you, Mr. Chairman. I am grateful to this committee for holding these hearings. I think they are very important. I think it is essential that Congress take——

Senator METZENBAUM. Bring your mike a little closer, please.

Mr. KAHN. Yes, I am sorry.

I think it is essential that Congress take active steps to ensure that the policies of the antitrust laws be more aggressively applied in the airline industry. As one who was intimately involved in the process of deregulation, I followed the fortunes of this industry sufficiently closely to urge the following propositions on you with a good deal of confidence.

Number one, airline deregulation has, in my opinion, been a success. It has achieved the overwhelming share of the public benefits that we expected of it, and nothing I say from here on is intended to dilute that observation.

Second, deregulation and competition have clearly contributed to a substantial deterioration, however, in the quality of service. In part, I am going to argue those are not problems at all, but they are the consequence of travelers taking advantage of the new low-price, low-quality options that deregulation has offered them. But in part, I believe they are the result of severe derelictions on the part of federal government policy which can and must be corrected.

Third, in particular, the administration appears to have fallen far short of fulfilling its responsibilities to provide adequate air traffic control and airport capacity. Finally, the Department of Transportation has, in my judgment, shown an inadequate appreciation of the importance of aggressive antitrust policy in keeping this industry competitive and so continuing to fulfill the promise of deregulation.

On the accomplishments of deregulation, I will have to be, of course, very, very brief. It has unleashed a flood of competition

which continues intense and effective in serving the overwhelming majority of travelers.

Average yield per airline passenger mile dropped more than 28 percent in real terms between 1976, which was the last year before the CAB began to permit heavy discounting, and 1986.

The structure of fares has come into much closer alignment with costs. Travelers are offered a much greater variety of price and quality options. The airlines have been forced greatly to improve their efficiency, and I think the widespread popular supposition that the quality of service has deteriorated generally is probably more wrong than right.

Thanks partially to the essential air service program, the Regional Airline Association tells me that no community that had certificated service before deregulation has lost it, and that many more communities in all size categories have gained increased service than have suffered a decrease since deregulation.

Now, of course, if you are going to have low fares, higher load factors, increase in traffic, it is going to produce greatly increased congestion. But as I say, this is, in part, the result of free consumer choices.

And despite the popular supposition that flying has become less safe, the accident statistics for the only services we deregulated, the scheduled services of American airlines, tell a dramatically different story.

Accident rates, if you take the eight years now, 1979 through 1986, are all 35 to 40 percent below what they were before deregulation. That does not mean the margin of safety may not have narrowed. I think there is reason to believe that the FAA has not been adequately staffed.

The flying public is prepared to pay whatever it takes to give us safety, and I think it is the responsibility of Congress to see that we do pay it and that we get the services that we pay for.

The increasing congestion and delays are clearly a very serious problem. I think there are three areas in which government responsibility bears a substantial responsibility. One is the failure of government adequately to expand airport and air traffic control capacity.

What we have got here is a kind of reverse user fee. The users pay for services that the government is supposed to provide, but they do not get them. I call to your attention the periodic assurances we get from the FAA that they have plenty of air traffic controllers, but they are going out to train a thousand more immediately.

I have some very strong words to make in my statement, and the Senator has anticipated them, about the treatment of the air traffic controllers. There was a group of consultants that reported to the Department of Transportation that never in their experience had they seen so much resentment and antagonism between management and employees as they had seen between the flight controllers and the FAA.

While I think most of us agree with what President Reagan did in 1981, I think, considering especially that we need the controllers, that the unwillingness of the government to hire any of them

back is sheer vindictiveness, a triumph of ideology over humanity and the interests of the flying public.

The second delinquency of public policy to blame for the congestion of our airports is the failure of the FAA and the nation's airports to make use of the free market. The FAA blames the airlines for bunching too many flights at congested times and places and, for the second time in two years, is telling them to get together under exemption from the antitrust laws and divide up the slots among them, reimposing on the industry a cartelization far more comprehensive than the CAB was ever able to practice.

The fault does not lie with the airlines; they are behaving the way we want them to do. They are trying to give the public what it wants. The failure lies with the FAA and the airports. They are not pricing the scarce slots and air channels correctly.

I devote a good deal of my testimony and my written argument to that subject; I must pass it up here. But we need either to limit the number of slots to a point that would avoid undesirable congestion in good weather, at least, and then auction them off, or, second, we need a sensible set of landing fees that reflect the fact that at scarce airports at scarce times, landing is very, very valuable.

We should, in either case, use the proceeds from either the high fees or the auctioning to expand capacity and to subsidize lower landing fees off peak and at other airports.

My last topic, of course, goes to the antitrust problem, which you have been talking about a great deal. The willingness of the FAA, in effect, to force antitrust exemptions and cartelization on a reluctant industry is only one manifestation of the failure of that agency to appreciate the purposes of antitrust, and nowhere is that more clearly manifested in their attitude toward airline mergers.

Again, I discuss this at some length in my testimony. I attack the easy assumption by the ideologues of laissez-faire that contestability takes care of everything; that private parties cannot monopolize airline markets because the minute they raise their price two bits, there will be a rush of competitors into the market.

I know of seven studies now of airline pricing since deregulation. They all conclude that while, yes, airline markets are relatively easy to enter, the potential entry of competitors is no substitute for competitors already there. I would rather have another competitor in the market than six contestors in the bush, and the statistics bear that out.

Now, the view that the contestability of airline markets makes antitrust enforcement unnecessary is very close to the position that DOT is taking in dismissing the objections of the Department of Justice to mergers like Northwest/Republic and TWA/Ozark, and I suspect that they will do the same thing about the merger of U.S. Air and Piedmont.

Contestability is not a sufficient protection, in my opinion, and anybody who looks at the airline industry certainly knows that the likelihood and opportunity of entry, particularly by new carriers—low-cost, price-cutting carriers—has greatly diminished in recent years and is likely to remain much lower than before.

Senator METZENBAUM. Would you please be good enough to wind up, please?

Mr. KAHN. Let me just say, then, finally that I need say no more about the final step, which is to transfer antitrust authority from Transportation to Justice. It is obvious that that is what we should have done in the first place. I advocated it in 1978.

The whole idea of deregulation is that we treat this industry like other industries. Consumer protection functions and misleading advertising should be turned over to the FTC. Antitrust exemptions and mergers should clearly be turned over to the Department of Justice.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Testimony of Alfred E. Kahn*

Before the Subcommittee on Antitrust, Monopolies and Business Rights

Committee on the Judiciary

United States Senate

March 25, 1987

Mr. Chairman and members of the Subcommittee, I am grateful to you for this opportunity to testify on a subject very close to my heart. I am even more grateful to you for holding these hearings, because I believe it is absolutely essential for Congress to take active steps to ensure that the policies of our antitrust laws be more aggressively applied to the airline industry.

I have not engaged in intensive research on the developments in that industry over the last decade. But as one who was intimately involved in the process of deregulation, I have followed its fortunes sufficiently closely to urge upon you the following propositions with a good deal of confidence:

1. First, and foremost, airline deregulation has in my opinion been a success; it has achieved the overwhelming share of the public benefits we expected of it. The concerns I will express to you about present trends in the industry must absolutely not be construed as either expressing any doubts about deregulation or in any way suggesting we reverse that process.

2. At the same time, deregulation and competition have clearly contributed to a substantial deterioration in the quality of service. In part, I will argue, these are not problems at all, but the consequences of travelers taking advantage of the new price/quality options that deregulation has offered them. In

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*Robert Julius Thorne Professor of Political Economy, Cornell University, and Special Consultant, National Economic Research Associates.

part, however, they are the consequence of severe derelictions on the part of Federal government policy, which can and must be corrected.

3. In particular, the Administration appears to have fallen far short of fulfilling its responsibilities to provide adequate air traffic control and airport capacity. And instead of following the free market principles it professes to espouse to solve the problems of congestion, it has been all too quick to resort to regulatory and cartel-like expedients that can at best provide only short-term palliatives and at worst could undermine the free competition that it was the purpose of deregulation to liberate from governmental restraint.

4. Finally, the Department of Transportation has, in my judgment, showed an inadequate appreciation of the importance of aggressive antitrust policy in keeping the airline industry competitive and so continuing to fulfill the promise of deregulation. Instead, it seems--out of what combination of naivete and ideological libertarian ideology, I cannot say--to have equated deregulation with simple laissez faire.

The accomplishments of deregulation

Deregulation has, indisputably, unleashed a flood of competition, which continues intense and effective in serving the overwhelming majority of travelers. That has caused a great deal of turmoil--more, I think, than most of us would have predicted. Turmoil has, however, socially positive as well as painful aspects: a release of creativity, entrepreneurship and innovation, along with painful readjustments, bankruptcies and unprecedented financial losses. Underneath all the confusion and travail, competition has been doing just what it was supposed to do--not to provide an easy life for managers and employees, but, instead, to serve and protect the consuming public.

1. The structure of fares has come into much closer alignment with costs. Fares have gone down systematically, on average, in relationship to distance, the density of traffic and its discretionary character--the kind of frequent, conveniently scheduled service that business people need is far more costly to provide than what most vacation travelers are willing to pay for. Fares now conform much more closely also with the relative costs of providing carriage on and offpeak, first in openly-quoted differentials, and second, far more important, in the widely diverging availability of discounted fares from flight to flight.

This tendency has by no means been universal. But even the travelers on relatively thin routes who have been the victims of some outrageous, or seemingly outrageous, geographic price discriminations have the protection--in varying degrees effective--of the relatively high degree of contestability of airline markets, and the ability to drive to a nearby hub where discount fares are available in profusion.

2. The overwhelming majority of travelers have benefitted directly from the unleashing of price competition. Average yield per airline passenger mile dropped more than 28 percent in real terms between 1976--the last year before the CAB began to permit discount fares on a large scale--and 1986. Last year, according to the Air Transport Association, some 90 percent of all passengers flew at fares below the formal coach level, at an average discount of 60 percent.

3. Travelers are being offered a much greater variety of price and quality options. The most familiar example was of course People Express, with its offer of bare transportation at very low fares. Peoples is gone but there is still Continental, a consistent low-fare carrier. The dominant competitors have responded with even more deeply discounted fares, accompanied by various restrictions and cancellation penalties, less commodious seating and longer lines at the

counter, and, at the other end, an increased range of more comfortable business, executive and first class services.

4. With the removal of all the detailed regulatory restrictions on their activities and under the enormously intensified pressures of competition, the airlines have achieved striking improvements in efficiency. The sharp increase in hub and spoke operations has produced a better utilization of aircraft and the ability to use large planes; it also has opened up a wider range of destinations from all originating points because of the confluence of traffic at the hub.

Load factors have gone up, thanks partly to the accentuated peak/offpeak fare differentials. Opponents of deregulation confidently predicted that free skies would be filled with airplanes flying half empty. On the contrary, it was under regulation that they were doing so, precisely because non-competitive fares meant low breakeven load factors and encouraged competition in scheduling. Price competition has driven breakeven load factors up and scheduling competition down, just as economic logic predicted it would.

The pressures of competition have also compelled the elimination of inefficient work practices and truly dramatic reductions in work forces. Yet total employment in the industry is above pre-deregulation levels.

5. Competition has exerted very healthy downward pressure also on inflated wages. The process has been painful; the fact remains that because of the way in which regulation systematically suppressed competition, the wages of airline employees were far above competitive levels and were being earned at the expense of consumers.

6. The widespread popular supposition that the quality of service has deteriorated is probably more wrong than right.

The Deregulation Act provided that no community enjoying certificated service at the time of its passage would lose it for the first decade; it set up an Essential Air Service program to provide continued direct governmental subsidies, to the extent necessary to achieve that goal. In consequence the only communities that have lost scheduled service--91 of them between 1978 and 1984--were ones previously served by unregulated, non-certificated carriers; so the losses can not be attributed to deregulation. No fewer than 137 towns had suffered a similar fate during the previous ten years.

In any event, many more communities in all size categories have gained increased service than have suffered a decrease since deregulation. Non-hubs as a group had by 1984 or 1985 experienced something like a 20 percent increase in weekly departures. Flights directly between small towns have declined significantly, but flights between even the small towns, on the one side, and medium sized or large hubs, on the other, have increased substantially--both of these changes reflecting the very sharp increase in hubbing.

Of course, higher load factors, required by lower fares, as well as the increase in traffic stimulated by them, have resulted in greater congestion; but this must be regarded in large measure as the result of free consumer choices. In view of the increasingly diversified availability of higher fare/quality combinations as well, it is not possible to consider these changes as constituting a welfare loss; on the contrary.

Especially topical is the question of what has happened to airline safety. Even as we were deregulating we recognized the danger that the very healthy downward pressures of competition on prices and costs might induce the carriers also to cut corners on safety; we therefore importuned the Federal Aviation Administration to increase the intensity of its surveillance of their practices. At

the same time, the far greater availability of competitive alternatives, actual and potential, made possible by deregulation has the opposite effect: any airline that has one or two accidents is out of business today, because customers can quickly desert it for a competitor.

The widespread concerns about airline safety doubtless spring principally from the series of terrible accidents in 1985. But these involved almost entirely foreign carriers and domestic charter operators, which were always essentially unregulated--Japan Air Lines, Air India, Mexicana, and the two charters, Galaxy and Arrow.

The figures for the scheduled operations of American carriers, which alone we deregulated, tell a very different story. Average annual accident rates during the seven years since deregulation, 1979 through 1985, were all approximately 35 percent below their levels in the five prederegulation years. And 1986 was one of the best years in history.

These figures do not exclude the possibility, to be sure, that the margin of safety may have narrowed. I am not an expert on what it takes or would take to keep the airways safe. I will offer some reason to believe that the FAA has not been adequately staffed; the flying public is prepared to pay whatever it takes to ensure that that agency is sufficiently funded to do its job, and I suggest it is the responsibility of Congress to see that we do so--and that the funds raised in this way be used for that purpose. I also regard the apparent ability of private planes to fly into commercially congested flight paths as absolutely inexcusable. Still, the objective record of the last eight years provides absolutely no basis for the supposition that economic deregulation is or need be incompatible with airline safety.

The problems of congestion and delay

The increasing congestion and mounting delays that travelers have been experiencing in recent years is clearly a serious problem. While I will attempt to list what seem to me its major causes and implications, I will concentrate on the ones that seem to me most directly relevant to the mission of this Subcommittee--the ones that reflect failure of government agencies to understand and follow free competitive market principles.

Two things, it seems to me, need to be made clear at the outset. One is that increasing congestion and inconvenience is not in itself a sign of failure of either the functioning of markets or of deregulation. Under regulation, travelers were denied the benefit of a variety of price/quality options; in consequence of the strict limitations on price competition, carriers competed in ways that inflated costs--offering better meals, larger override commissions to travel agents, free inflight entertainment, and denser scheduling. After deregulation, low-cost, aggressively competing carriers offered the public the choice instead of low fares, provided, necessarily, with correspondingly lower-cost service--narrower seating, longer lines, fewer amenities. The enormous response of travelers to the availability of these new options is a vindication of deregulation, not a condemnation of it.

Second, the increased congestion does not necessarily mean a threat to safety. The FAA has responded by developing the practice of holding planes on the ground until a clear channel can be assigned to each of them. In consequence, the principal harmful effect of congestion at crowded airports and at hours of peak demand has apparently been delay, rather than diminished safety.

From my own limited observation, it appears the costs of congestion and delay have diminished the quality of service not just to the travelers who have responded to the correspondingly low fares, but to almost all travelers. This fact

does seem to me to reflect a considerable imperfection of competition--a failure on the part of the carriers, as a general proposition, to offer travelers willing to pay the full coach fare correspondingly superior quality of service, shorter lines, and the like. I can think of no more effective remedy for this deficiency than the force of competition itself, provided it remains effective--a proviso about which I will of course have more to say when I turn to the area of antitrust policy. Carriers have in fact been responding, however inadequately, to this unmet demand by developing business class, club class, special lines at the counter, not to mention the ability to make reservations at the last moment and to change them without penalty.

There remain, however, three areas in which government policy must bear a substantial responsibility.

One is the failure of government adequately to expand airport and air traffic control capacity. This is not an area in which I can speak with especial expertise. I confine myself therefore to calling to the Subcommittee's attention the accumulation, which I understand now amounts to over $5 billion, of ticket tax revenues in the Airport and Airways Trust Fund. This is an interesting case of what might be referred to as a reverse user fee--a situation in which users pay for services provided by the government but don't receive them. I call your attention also to the periodic assurances we receive from the FAA that, on the one side, they have plenty of air traffic controllers, yet, on the other, that they are engaged in a crash program to train thousands more.

Most Americans, I think correctly, supported the President's vigorous response to the air traffic controllers strike, back in 1981. At the same time, it appears that the conditions under which the controllers had been working were in fact abominable; that they had been complaining about those conditions for years

and that the FAA had been uncompromising and unresponsive. A group of consultants reported at the time that its members had never previously observed a situation in which there was so much mutual resentment and antagonism between management and its employees as between the flight controllers and the FAA. It would be very strange that a management could have been so seriously at odds with its employees for more than a decade without being at least partly responsible. A General Motors executive was once asked what would happen if GM had lost half to three fourths of the skilled machinists at one of its plants; the answer was that the Company would be unable to afford that kind of loss and would find a way of making peace with the strikers and getting them back on the job.

In these circumstances--and considering also that we apparently need those controllers--it seems to me that the unwillingness of the government to hire any of them back, after more than six years, is sheer vindictiveness, a triumph of ideology over humanity and the interests of the flying public.

The second delinquency of public policy that bears a large share of the blame for the congestion of our airports and airways is the failure of the Federal Aviation Administration and the nation's airports at large to make use of the free market.

Congestion is an economic problem. It is a consequence of the economic pressure on the airlines to schedule as many flights as possible at the times and places that appeal to the greatest number of travelers, and the shortages of capacity at those times and places. And the immense cost it imposes are economic costs--wasted fuel and wasted time.

The FAA, which manifestly does not understand either simple economics or the virtues of a competitive market, blames the airlines for bunching too many flights at those times and places, and for the second time in two years is telling

them to get together, under exemption from the antitrust laws, and divide the scarce slots up among themselves--thereby reimposing on the industry a cartelization far more comprehensive than the Civil Aeronautics Board was able ever to practice: we were statutorily prohibited from controlling scheduling.

But the fault does not lie with the airlines: they are behaving exactly the way we want and expect them to behave under pressure of competition--trying to give the public what it wants. The failure instead lies with the FAA and the airports: they are not pricing the scarce slots and air channels correctly.

When the demand for any particular service exceeds the available supply, it means the service is being underpriced. The most efficient solution is to let the competing demanders bid the price up. This accomplishes two purposes: it both creates an incentive and provides funds to expand supply, and it restricts demand to the available supply; the price rises until the quantities available are just equal to the number of people willing to pay it. The spectacle of airplanes, filled with passengers, queuing up on runways for an hour or more, waiting for a chance to fly, proves that the price of takeoffs and landings at those times and places is simply too low: it conjures up images of customers in Communist countries waiting for hours for an opportunity to buy a quarter pound of meat, a dreadfully inefficient way of rationing scarce goods.

One of the clearest evidences of the success of airline deregulation has been the wide spread of peak/offpeak fare differentials. As I have already pointed out, it has on the one hand offered the overwhelming majority of passengers wonderful opportunities to fly at low fares, provided they are willing to travel when capacity is ample, and on the other hand raised load factors and reduced unit costs.

At the heart of the present intense congestion is the failure of the public authorities that set landing fees and ration our air traffic capacity to apply the

same pricing principles to that scarce good. For the most part, airports still set landing fees, without differentiation between peak and offpeak, on the basis of the weight of the planes, and at levels intended only to recover the historic capital costs of construction, rather than to equate supply and demand. And it has apparently not even occurred to the FAA to impose direct charges for the use of air traffic control capacity at all, let alone charges aimed at eliminating such imbalances.

My own preference--setting aside the possibilities of expanding supply, which is the other way in which the market corrects shortages in response to high market-clearing prices--would be for them to set such fees that vary from time to time and place to place, just as regulated telephone and electric companies and unregulated hotels and resorts do. I can see the New York Port Authority, for example, charging many thousands of dollars for landings at peak hours at LaGuardia, JFK and Newark--which might translate into a doubled fare for the Washington Shuttle at those times--and using those huge revenues to offer zero or negative landing fees to carriers willing to land offpeak, or at less crowded airports, which competition would force them to translate into corresponding sharp reductions in ticket prices at those times and places. Travelers to whom it is very important to take off and land at peak times, using convenient airports, would pay higher fares--quite possibly much higher; but in exchange they would be spared the senseless delays to which they are now subjected. And travelers to whom money is more valuable than those particular conveniences could be offered bargains to travel offpeak, and/or use airports like Dulles, Newburgh or Islip, or even Hartford.

Auctioning off the scarce slots would do the same thing. Both it and economically proper fees for access to the airports and airways would have the virtue of appropriating those scarcity values or rents for the benefit of travelers

generally and ensuring their use to expand capacity and to reduce fares correspondingly offpeak.

The important point is this: that if in fact airlines, under pressure of competition, are scheduling more flights at crowded airports and peak times of day than can be accommodated without severe delays, then clearly whatever they are paying for access at those times is not high enough: the carriers and travelers who contribute to the heavy costs of congestion at those times and places should pay those costs, just as do the users of telephone service at busy hours.

Those slots are like Rembrandt paintings. We don't allocate those precious works of art by demanding that all the collectors with a possible interest in them get together, under grant of antitrust immunity, and reach some sort of agreement for rationing them. We let them bid against one another until the price gets so high that the demand gets equated with the supply, and the paintings go to the people who want them most and are best able to pay for them.

Critics blame the airlines also for having gone over wholesale to hub and spoke operations, which of course creates congestion when the banks of interconnecting flights come into and fan out of the hub. But the airlines adopted hubbing and spoking for simple economic reasons. If it produces excessive congestion, the reason is that the FAA and the airports are not setting the number of slots at peak times at the efficient level, and not setting the prices that the carriers and their passengers confront at the hub at those times at levels that reflect the congestion costs that the practice imposes on all travelers.

Proper landing charges or limiting and auctioning off slots at crowded airports at congested times would correct those signals; it would undoubtedly make hubbing somewhat less attractive, and create an opportunity for some competitor to

introduce more direct flights between secondary cities that would avoid the congested hubs.

One of the most important ways in which any of these devices would do the job is likely to be by pricing out of these precious, peak slots the corporate jets that now occupy them; in some instances that might go far to solve the entire problem. One of those jets uses up a slot just as much as a 747; the picture of two or three corporate executives paying only a minute fraction of the costs that they impose on the system, holding up a planeload of hundreds of other passengers, is one that would in any sane society cause the latter to take to the streets if they knew what was happening. Pricing those landings at several thousand dollars each would do the same job peacefully.

The market does not solve all our problems; but it takes a special kind of idiocy to refuse to let it do the job where it obviously could do it with far greater efficiency and equity than either the status quo, a market-sharing cartel of carriers, or a bunch of bureaucrats who are itching to run the whole system themselves.

I recognize that it would be no simple matter to institute a system of economically intelligent landing fees: ownership of our airports is widely dispersed, and there is no law at present that would enable the Federal government to require their owners to price their services intelligently. We certainly have no institutional arrangement that would enable uncongested airports to charge negative landing fees or require congested ones not only to charge market clearing fees but to transfer the surplus revenues this would generate in such a way as would subsidize landings at uncongested ones.

Yet where a change like this makes such obvious economic sense, one would have thought an agency of government that is willing to take it upon itself to grant exemptions to the antitrust laws would be searching for some superior

equivalent. I do not see, for example, why Congress could not instruct the FAA to set just such an efficient system of fees for access to the air traffic control system, or condition grants of the billions of dollars in the airport trust fund on the recipient airports adopting efficient landing fees. If the Department of Transportation cannot figure out how to apply efficient pricing principles, I am confident there are economists at the Antitrust Division of the Department of Justice, the Federal Trade Commission and the Office of Management and Budget who would be delighted to help. And that leads me to the third failure of Administration policy, and the one of most direct relevance to the mission of this Committee.

Industry reconcentration and the failure to apply antitrust principles

The willingness of the FAA in effect to force antitrust exemptions and cartelization upon a reluctant industry is only one manifestation of the obvious failure of that agency to appreciate the purposes and importance of antitrust.

At a conference a couple of years ago, I was astounded to hear an official of the Federal Maritime Commission applaud the Maritime Shipping Act of 1984 as "a close to perfect example of deregulation"--which he evidently expected me to applaud--because it made it virtually impossible for the Department of Justice to attack price fixing and market sharing agreements under the antitrust laws. As I have inveighed against some of the mergers in the airline industry in recent years and criticized the Administration for not preventing some of them, I have over and over again been asked by reporters whether that didn't mean that I was really proposing reregulation of the industry. The view is apparently very widespread, among both the uninformed and sophisticated advocates of government laissez-faire, that antitrust is simply another form of regulation, and that it is inconsistent for someone like me--not to mention organizations like the Consumer Federation of

America, the Public Citizen, Common Cause--to have been strong proponents of airline deregulation, while at the same time insisting on vigorous application of the antitrust laws to that industry. That was certainly not the conception of President Carter, Senator Kennedy, or other leaders in the fight for airline deregulation.

On the contrary, in our view--I'm confident I can speak for those others and, I'm confident also, in the view of this Subcommittee--deregulation makes antitrust more important, not less. The reason we opposed economic regulation of the airlines, as it was practiced in the forty year period between 1938 and 1978, was that it systematically suppressed competition. The essence of deregulation, therefore, was to get the government out of the business of protecting this industry from competition. The essential purpose of the antitrust laws, in exactly the same way, is to prevent businesses themselves from suppressing competition, whether by price-fixing or market-sharing agreements, by competition-suppressing mergers, or by exclusionary practices that deny others a fair opportunity to compete with them. The goal of deregulation was a competitive airline industry; the goal of antitrust is to keep it that way.

I apologize for spelling this elementary conception out to the members of this Subcommittee, but I'm not certain that even they are aware of the extent to which the ideologues of what they call the "free market" have succeeded in persuading not only themselves but large portions of the public and, I regret to say, this Administration, that there is no need for vigorous application of the antitrust laws: the "free market" will take care of everything.

One of the central strands in the reasoning of these proponents of something close to total laissez-faire is that airline markets are highly "contestable"--that private parties cannot succeed in monopolizing them or exploiting

consumers, because, now that the government is out of the way, rivals will enter any such markets and quickly drive down any monopoly prices.

According to this view--seldom articulated as baldly as I will here--the comparative ease of entry that helped recommend deregulation of the airline and trucking industries makes antitrust not very important as well. As exponents of this view have pointed out, correctly, it is indeed the case that even a single firm monopoly is incapable of producing harmful results in the face of perfect contestability of the markets in which it sells: a monopolist in that situation will behave exactly as a pure competitor, because if it does not, rivals will enter immediately and drive its prices to the competitive level. By the same token--it is rarely observed, but follows logically--we need not in those circumstances worry about horizontal price fixing conspiracies either: they too will be unable to raise prices above the competitive level. In short, if contestability were perfect, there would be no need for antitrust laws at all.

That is very close to the position the Department of Transportation has in effect taken in blithely dismissing objections by the Department of Justice to the Northwest-Republic and TWA-Ozark mergers, which combined direct competitors with some 80 percent of the departures from Minneapolis/St. Paul and Detroit in the first case, and St. Louis, in the second. Those are not necessarily economically significant markets: for travelers who fly longer distances with stops or plane changes in those cities, the market clearly embraces the opportunity to fly instead via Chicago, Denver, Atlanta, Kansas City or Dallas/Fort Worth. There is genuine competition over different hubs. But for traffic originating or terminating in Minneapolis/St. Paul, Detroit or St. Louis, the mergers sharply reduced the number of competitors--on many routes from two to one. The pending merger between U.S. Air and Piedmont will evidently do the same thing.

In my opinion, the contestability of airline markets does not afford travelers sufficient protection in those circumstances. I am aware of seven studies of airline pricing since deregulation. Every one of them has reached the same two conclusions. The first is that market concentration ratios make a significant difference--which is another way of saying that a competitor in the market is worth all the possible contesters in the bush. The second is that actual entry--especially entry by new firms--has been by far the most powerful competitive force.

It seems to me absolutely incontestible that the likelihood of entry into any industry is itself powerfully influenced by the previous practices of the incumbent firms. The recent history of the airline industry provides ample documentation of that proposition: entry, particularly by genuinely new firms, has clearly become much more difficult, and some of the reasons for the change would be instantly recognizable by anyone familiar with antitrust.

The recent wave of mergers in this industry is an important one of those reasons. I must observe at the outset, an industry that has been subjected to comprehensive cartelization for forty years and is then deregulated will inevitably experience a considerable amount of competitive shakedown, and must be accorded a good deal of freedom to restructure itself; that has to include mergers. Moreover, the mergers, as well as the close operating agreements such as have proliferated between major carriers and commuter airlines, confer clear benefits on travelers: the conversion of interline travel, where you change both planes and airlines, into online, where you change planes but not airlines, means improved convenience. The mergers of Northwest with Republic and of Delta with Western have improved the ability of those companies to compete for long-haul business with the extensive route systems of United and American. When Texas Air acquired Eastern Airlines,

the price of Delta airline stock went down, clearly suggesting it was widely expected to improve the competitiveness of the first two with the third.

Finally, despite these mergers, market concentration in the industry, correctly measured, has gone down since deregulation, not up: the fact that the top eight firms now have about the same share of the total national traffic as during the late '70s conceals the fact that, it appears, in one city pair market after another, the number of active competitors has typically increased. The removal of the detailed route restrictions administered by the Civil Aeronautics Board has converted all eight into actual or potential competitors, on all of their routes.

Still, even apart from the direct suppression of horizontal competition that has been involved in some of these mergers, I don't see how anyone can avoid being worried about the cumulative process of competition by preemption that they have entailed. It is not merely--probably not even primarily--the ability to offer better service but the ability to control traffic that motivates the linking of route systems. Once DOT swallowed the elephant of United's acquisition of the trans-Pacific assets of Pan American, which reduced from three to two the number of U.S. competitors in this closed market--in the process dismissing the Antitrust Division's proposed divestitures sufficient to create a third viable competitor--it must have seemed to them difficult to strain at the gnat of Northwest's attempt assertedly, by acquiring Republic, to assure itself additional feed for its operations over the same routes, in order to compete with United. Delta's reluctant acquisition of Western was evidently similarly compelled by the need to assure itself feed and the other advantages of a thoroughly developed route system to support its transcontinental operations in competition with the vaster systems of United, American and Texas Air.

Moreover, consider the effect that the linking of route systems in that way has on the ability of smaller rivals to challenge the major carriers on individual routes. There is a widespread view among commuter airline companies that entry or even survival in that business, which has been one of the most dynamically competitive parts of the industry, is virtually impossible except in tight alliance with a single major carrier. More than fifty such alliances have been consummated in the last few years. And consider the bearing of all those alliances on the expectation that the commuters would be one of the main sources of potential competition with the majors, just as previously local and regional carriers such as Allegheny Airlines (now U.S. Air) and Piedmont, which used to exchange passengers dutifully with the major carriers, invaded the long-distance markets in direct competition with them after deregulation.

These developments have brought me to the position of a virtual per se opposition to any more major mergers that would either substantially increase concentration in the industry in the aggregate or suppress significant amounts of competition in individual markets or parts of the country. I believe that the DOT's dismissal of some of the complaints of the Department of Justice in the case of the Northwest-Republic and TWA-Ozark mergers was unconscionable, and I strongly protest the likelihood that, if we are to judge by its past behavior, the Department will quickly rubberstamp the proposed joining now of US Air and Piedmont.

I must point out that I have not had the opportunity to analyze any of these mergers in any detail, and can not therefore do justice to the full range of considerations relevant to judging their probable effects. I remind you of my previous observation that mergers may result in improved service and an improved ability of the merging parties to compete effectively: these possible benefits must be weighed against any anti-competitive effects. I am informed by the Department

of Justice, however, that on twenty-one routes, U.S. Air and Piedmont compete in the provision of non-stop service; on nine of them, they are the only two rivals, and on another seven there is only one other competitor. I do not suggest that this is anything like an adequate analysis; in some of these markets, one-stop service may offer effective competition with the proposed combination; there may be other carriers operating in adjacent markets that would be likely to challenge it if it tried to raise fares on the routes it would initially dominate--although I have already suggested my reservations about relying on contestability, in an industry increasingly confined to a handful of dominant carriers and their tightly-linked commuter affiliates. I must confess, finally, that the intensity of my feeling about this particular merger is accentuated by the fact that these are the only two carriers serving my hometown--and that number was only recently reduced from three to two when Piedmont not only acquired Empire but then entered into a very close operating agreement with Brockway Airlines. When I drive to Syracuse, as I often do, to fly to New York City, my effective choice is only between those two; three weeks ago, faced with the necessity of getting from Philadelphia back to Ithaca, once again there were only two carriers available to me--U.S. Air and Piedmont.

As I say, these mergers would be no cause of concern if, indeed, entry into their markets by either existing carriers or by totally new ones could be counted upon quickly to frustrate any attempts on their part to raise fares. Yet I do not see how any objective observer can look at the airline industry today and not recognize that the likelihood of genuinely new entry--such as occurred in the first years after deregulation, by low cost, aggressively price-cutting companies like World, Capitol, Air Florida, People Express--has been drastically reduced by the failures of all of these companies and almost all of the others--failures surely in

considerable part attributable to the competitive responses developed in recent years by the major carriers--control of computerized reservation systems by the major carriers, frequent flyer programs, and Ultimate Super Savers. Those responses may or may not have been illegitimate: all of them raise very difficult antitrust issues. The fact remains that they constitute, in the aggregate, powerful barriers to new entry: as a former student of mine once observed, a hiker, inclined to cut across a field, might not pay much attention to a prominently displayed No Trespassing sign, standing alone; but if he saw the field behind it littered with the bodies of previous trespassers, it seems a reasonable supposition he would treat it with respect.

There remains the possibility of competitive entry by existing carriers; but I find it questionable that any of them could successfully challenge a Northwest at Minneapolis, or would be interested in restoring competition within New York State, if USAir and Piedmont merge.

I sincerely hope that this Committee will be able to marshall better evidence than I have been in a position to gather about the effects of the mergers that have so far taken place on the intensity of competition in the airline industry. My colleagues at Cornell University assure me that when Piedmont Airlines combined the operations of the previously highly competitive Empire and Brockway, fares promptly went up and the restrictions associated with SuperSavers and similar discount fares became more onerous. There is some anecdotal evidence of fares having gone up dramatically--and service severely deteriorated--in markets in which Northwest and Republic airlines formerly competed. I myself observed several years ago, when People Express entered the New York-Minneapolis/St. Paul market, that the coach fare (by Northwest) before its entry was $234, and there were some severely restricted discount fares available in the $130 range. Peoples came in at $99 and $79, for peak and offpeak travel times, respectively. Immediately, Northwest

reduced its fares to $95 and $79, at the same time publishing full page advertisements pointing out the numerous respects in which the quality of its service was superior--wider seating, free meals, free baggage handling and interchange, and the like--so that in fact Northwest was not merely meeting the new competition but substantially undercutting it. I expressed concern at the time that Peoples might not be able to withstand this kind of highly selective, discriminatory sharpshooting--I raised the question of whether it might not properly be labeled predatory--and expressed a certain amount of confidence in what would happen to fares if the tactics succeeded. For this effrontery, I was promptly denounced in an Op Ed piece in The Wall Street Journal, by a free market ideologue, as having betrayed the faith of deregulation: I was, the writer suggested, proposing reregulation under the guise of applying the antitrust laws.

I understand that Continental has now withdrawn People Express service from that market, and that the basic coach fare now stands not at its previous $234 but $330. I hasten to point out that there are a number of discount fares available, but most are apparently subject to all sorts of restrictions. There is an unrestricted coach fare of $129 available out of Newark, but I have no way of knowing how many seats are available at that level.

I suggest to the Committee one other very interesting piece of evidence about the likely effects of these mergers. I have been appalled to see how rarely, when announcements of them appear in the newspapers, any reporter even thinks to raise the question of their possibly suppressing competition, and their exposure to possible disallowance for that reason. The financial analysts exhibit no such delicacy or ignorance. On the contrary, time and time again, an analyst will urge purchase of the stock of the newly formed company on the ground, specifically,

that the merger promises to result in a substantial mitigation of price competition. Here are just a few examples culled from my In Box:

"Mergers and acquisitions continue to be proposed and approved at a record pace. There are major differences in the potential benefits to be derived from these proposed transactions. Some can provide substantial and almost immediate benefits through direct lessening of competition (e.g., NWA/Republic, giving NWA absolute control over most local traffic in yields in Minneapolis), while others merely create larger entities with no other obvious synergistic result (e.g., Delta/-Western)." (Oppenheimer & Co., Industry Review, November 10, 1986.)

"The Frontier purchase is a classic example of the benefits that accrue from eliminating the competition. United competes with Frontier on forty of Frontier's fifty-four routes, with more than 75 percent of Frontier's traffic coming from routes where the two overlap....'Absorbing Frontier ends the fare war of attrition in the West, and that's more important than its assets.'" ("United is Gaining a Lot More Than An Airline," Business Week, July 28, 1986, p. 31. This was written, of course, before the United-Frontier merger fell through.)

"Due to NWA's relatively monopolistic position at its three domestic hubs, we do not believe the recent fare announcements will affect NWA as much as it does other carriers." (Oppenheimer & Co., Daily Option Note, February 11, 1987.)

"USAir controls 33 of the 42 gates at Pittsburgh and thus has insulated itself from large-scale competition. New carriers in Pittsburgh must sublet from an existing carrier and generally can schedule flights only at times when the prime carrier does not need the gate. The many Pittsburgh monopolies have allowed USAir to react to low-fare competition elsewhere on the system by increasing fares in Pittsburgh....We estimate that more than 50 percent of these USAir customers are traveling on monopoly routes. This exclusive right to provide air transportation to

2.25 million passengers per year should be included in any evaluation of the assets of USAir. The merger of Northwest and Republic airlines has created a similar monopoly in Minneapolis....Similar concentrations exist for TWA at St. Louis....NWA is particularly attractive because the airline has only monopoly hubs." (Oppenheimer & Co., Monthly Portfolio Strategy, February 18, 1987.)

"The shakeout phase of deregulation is about to end and seven profitable megacarriers will dominate a more stable industry. With the seven megacarriers playing by the same rules of the game, the next five to ten years will be marked by much less cutthroat competition. This does not mean that competition won't be tough. It will be. But hub competition will take a different form, with frequency and quality of service once again becoming key." ("The Restructuring of the Air Transportation Industry," Speech by Michael W. Derchin, First Boston, Equity Research, March 9, 1987.)

Transfer the antitrust authority from the Department of Transportation to the Department of Justice.

The essential rationale of airline deregulation was that the protection of travelers could safely be turned over to the competitive market. An essential component of that conception was that this industry would be subject to the antitrust laws, in exactly the same way as all other American industries. And from the very outset that always meant to me that it would be subject to the jurisdiction of the Antitrust Division of the Department of Justice and the Federal Trade Commission. Congress decided otherwise; and I submit the experience of the intervening years has clearly demonstrated that Congress made a terrible mistake.

I will not impose on this Subcommittee by engaging in surmises about why the Department of Transportation seems still so disposed to a cartel-like

mentality, so inappreciative of the way a free market is supposed to function and of the importance of the antitrust laws in preserving the free market; it suffices for me to point out that the experience of the last several years justifies that characterization. I have my disagreements with the policies pursued by the antitrust agencies of this Administration as well. The fact remains that these are the agencies professionally oriented toward the preservation of competition, and they have demonstrated a far greater appreciation of what that requires than the Department of Transportation over the last several years. I see absolutely no reason to continue the present anomalous arrangement: having invested so much of my own energies in airline deregulation and in the cause of a competitive airline industry, I'm inclined to use some much more dramatic adjective, like "tragic." And I urge the Subcommittee, therefore, to proceed expeditiously to transfer this jurisdiction out of Transportation, where it should never have invested in the first place.

It might appear that in so doing you will be locking the barn door after the horse has been stolen. I submit that that is not the case: the airline industry is still far more competitive than it was under regulation; nothing I have said is intended to suggest either that deregulation was a mistake or that it is time to go back. The purpose of my testimony is to do my small bit to keep it that way.

Senator METZENBAUM. Thank you very much, Professor Kahn.

Mr. Winpisinger, we are happy to welcome you here this morning.

Mr. WINPISINGER. Well, thank you, Senator. Be assured that we in the Machinists Union deeply appreciate the opportunity to appear and lend whatever contribution we can to the record.

I would begin by taking up on a little colloquy you had with Senator Thurmond earlier. I deplore being in the center. I would like to be as far to your left, sir, as I could get. [Laughter.]

But we will grapple with that.

Mr. KAHN. No people will be fooled by your present position.

Mr. WINPISINGER. Let me say that I also applaud and fully support your opening statement, Senator, in its entirety, and with particular reference to the unfortunate souls who are former members of PATCO and the kind of treatment they got at the hands of the Executive Branch of our government. If I have enough time left, I will elaborate on that further, if I may.

We will submit our entire testimony for the record, obviously.

Senator METZENBAUM. The statements of all of you will be included in the record.

Mr. WINPISINGER. Let me just deal quickly with the conclusions. In the testimony of our organization before the Congress in 1977 and 1978, we predicted that deregulation would have a devastating impact upon the economic and personal lives of the employees in the industry, and that it would also deprive medium-sized towns, small towns, and many rural areas of our country of the quality and quantity of air transport service that they had enjoyed up to that time, and the safety of our air travel potentially would be imperiled, and that the industry would be open to economic predators whose only objective would be the amassing of the greatest possible accumulation of profit and economic power without any regard whatsoever for the public interest. Finally, we stated that the consumer would end up paying much more for much less.

As our testimony will show, to the sorrow of the traveling public and the working men and women in the air transport industry, all of these predictions have been and are continuing to come to pass.

During the period of deregulation, 1979 until now, roughly, incalculable damage has been inflicted. Deregulation of the airline industry has reintroduced the law of the jungle, and we of the IAM strenuously urge the Congress to rectify a situation of its own making.

The IAM endorses the passage of definitive legislative measures aimed at some re-regulation of the airline industry, and included among these we would exhort the establishment of a zone of reasonable fares, some kind of fare parameters within which everyone could compete and which would prevent carriers from economically exploiting the traveling public through price gouging and other means.

Moreover, we believe that the purely competitive antitrust aspects of a merger should be passed upon by the Department of Justice, as your proposed legislation would do. All other aspects of a merger should be relegated to the jurisdiction of the Department of Transportation, with the exception of the appropriate arrangements for the protection of the interests of the employees affected,

which we believe should be reposed in the Department of Labor. Unquestionably, DOL has far greater experience and expertise in employee protection than does DOT.

We also urge that an amendment to the Deregulation Act of 1978 be enacted which would require the imposition of the so-called Allegheny/Mohawk labor protective conditions in all mergers, acquisitions, and route transfer cases, as well as an amendment which would provide the employees of this industry a reasonable opportunity to receive the protections to which they are entitled under Section 43.

In sum, we clearly support the proposed legislation which is the subject of today's hearings and the other corrective actions which I have briefly outlined. We think a look at the figures is revealing in support of that contention.

In the period 1950 to 1978, there were nine mergers or acquisitions which involved 19 airlines. In the period 1979 to 1986, we have experienced 14 mergers, acquisitions or route swaps which involved 30 airlines—a very dramatic increase in that kind of activity in just a short 7- or 8-year period.

I would further submit, Mr. Chairman, that Congress, in its wisdom, continued to keep FAA on the job in this industry out of an apparent belief that private operators in the free market atmosphere would not have due regard for safety of the traveling public, and therefore we need FAA inspectors out there ensuring that safety regulations are met.

I would submit to you if they cannot be trusted to enforce safety regulations, the bare threshold of being in the industry, how can they be expected to support any element of the public interest or have any due regard for their employees or the traveling public in this free market atmosphere in which they are all trained, and trained with a vengeance, I might add?

Some of the things we are experiencing in labor relations in the airline industry today boggle the mind. They simply are throwbacks to an earlier day back in the 1920s when legislation was crafted to try to deal with these situations.

There is, in fact, today no expression of the public interest beyond safety considerations. The whole backlog of regulation as it was conceived and enacted over a period of time was the only manifestation and the only protection of the public interest that we have ever seen. It has now been repealed, save for the FAA's activities, and I think the public is paying the price for that.

Senator METZENBAUM. Would you wind up, please?

Mr. WINPISINGER. I think that pretty well sums up my arguments, Mr. Chairman. Perhaps in questioning we can come back to that chart because there are some observations I would like to make in connection with it.

Thank you.

[The prepared statement follows:]

Statement of William W. Winpisinger
On Behalf of the International Association
of Machinists & Aerospace Workers
Before the Subcommittee on Antitrust, Monopoly
and Business Rights of the Committee on the Judiciary
U.S. Senate

March 25, 1987

Mr. Chairman and Members of the Subcommittee:

My name is William W. Winpisinger, and I am International President of the International Association of Machinists and Aerospace Workers (IAMAW). The IAMAW represents 801,451 employees in a variety of industries throughout this nation. We are the largest union in the air transport industry, representing approximately 75,000 employees in virtually every craft and class. This representation is down from some 85,000 whom we represented prior to the enactment of the Airline Deregulation Act of 1978.

As a threshhold matter, this Committee should be aware that deregulation has had a devastating effect on the travelling public and on numerous airline employees. This ill-conceived legislation has bred a merger-mania which has permitted the few largest airlines which remain in existence to act as sharks in a feeding frenzy. Through defensive and offensive mergers, the industry has become dominated by five or six major carriers. Their victims are the travelling public who will be required to pay higher fares because of single carrier domination of numerous markets. The employees whose jobs are eliminated following each merger, in the name of economy of scale, are also victims of deregulation. Unless new legislation is enacted, service to the travelling public will continue to deteriorate and the economic hardship caused by deregulation will continue to be borne disproportionately by the working men and women of this industry.

Deregulation has also threatened the safety of the travelling public. It has caused service to the public to deteriorate. The consumer, in whose name purportedly all of this was accomplished, has and will end up paying much more for much less.

At the time we testified before the Congress in 1977 and 1978 when it was contemplating the enactment of legislation which

would deregulate the air transport industry, we stated that the impact of deregulation on air transport workers would be cruel, predatory, dehumanizing and demoralizing. In addition, we predicted that deregulation would lead to increased safety hazards and problems. We testified that deregulation would result in a loss of service to medium, rural and small communities and would cause a marked decline in the quality of airline service. We stated that lower rates, from cutthroat competition and short lived fare wars would, in the long run, result in permanently higher and less competitive ticket prices for consumers. We contended before Congress that when all the dog fighting was over and the dust had settled, there would be greater monopoly, not more competition, characterizing an airline industry possessing little regard for the public interest. Sadly, every prediction which we made in 1977 and 1978 has been or is being proved correct.

About three years ago, the Airline Deregulation Act of 1978 was described by a Wall Street investment banker as one of the strongest anti-labor bills ever enacted. We agree. Certainly, it has proved to be the most effective anti-labor legislation enacted in the Twentieth Century. No one can compare the air transport industry of today with the industry as it existed in 1978 and not conclude that the Act has had devastating effects upon the economic and personal lives of the employees of that industry, particularly those who were employed in and prior to 1978.

Congress knew that the people employed on the airlines in 1978 would be seriously hurt precisely because the statutory and regulatory safeguards which had protected the industry-Management and Labor - as well as the public were about to be removed. Until the enactment of the Deregulation Act, the Civil Aeronautics Board traditionally imposed formula for the protection of employee in route transfer, merger and acquisition cases. The CAB, the courts and the Congress recognized the justice and necessity of imposing a modicum of protection for employees. Employees, who through no fault of their own, are forced to suffer the downgrading or loss of their jobs or to

uproot themselves and their families from their communities for the economic benefit of their employer are entitled to a level of protection that ameliorates such hardship. Prior to deregulation, there existed an administrative and judicial recognition of the overall benefit which such labor protection had upon the public interest in terms of employee morale which translates into safety and efficiency of operations.

The enactment of the Deregulation Act changed all that. The CAB stopped imposing protective formula in these cases concluding that was what the Congress wanted, as evidenced by the enactment of the Deregulation Act. The Department of Transportation has continued to turn a blind eye to the employees adversely affected by these transactions, claiming fidelity to the spirit of deregulation. This Department of Transportation has radically departed from its traditional role of neutrality and now actively fights against any protection being made available to employees under Section 43 of the Airline Deregulation Act. Ironically, with the transfer to it of CAB functions, DOT has now become the employees' judge as well as their adversary in these Section 43 cases. The DOT did not wait long to establish its position regarding labor protective provisions. In the United-Pan Am Pacific routes case, the DOT stated that it would provide labor protections in a merger case only if there is a likelihood of a nation-wide disruption of air service, that is, a strike on every airline in the U.S., unorganized and organized. Because of the DOT's verbal sleight of hand, airline employees can forget obtaining the labor protective provisions to which they have been entitled for over twenty years.

As I noted at the outset of my testimony, the IAM alone has lost some 10,000 of its members in the airline industry, primarily due to the effects of deregulation. The years between 1980 and 1984 saw 4,300 mechanics furloughed (a decrease representing 12-15% of the total), while the number of planes in use increased by one-third. But the 50,000 jobs lost from all work classifications during the first two years of deregulation, as well as the many others which followed, do not tell the full story.

Several thousand retirees are presently enduring the loss and suspension of their pensions due to their former employers going out of business and going bankrupt. In addition, tens of thousands of airline families were uprooted and forced to move or resign their employment as the airlines shifted operations from one city to another. Some 27,000 IAM members alone had their lives and jobs disrupted by mergers, acquisitions, route transfers, bankruptcies and cost cutting drives. Without the imposition of labor protective provisions, the hardships suffered by employees and their families will only increase in the future.

Deregulation has fostered a number of get rich quick artists who view airlines, their employees, and the travelling public as pieces in a life-size Monopoly game. None of these players employs tactics that are more notorious or more destructive than Frank Lorenzo. Indeed, that view is shared with me by Frank Borman, former president of Eastern Airlines. On February 21, 1986 I was present at a negotiating session with my Vice President of Transportation John Peterpaul, former Secretary of Labor Bill Usery, John Leonard, former President of Eastern, and Frank Borman. Frank Borman stated that he found the tactics and methods of Frank Lorenzo to be so despicable that he vowed to put Eastern Airlines in Chapter 11 bankruptcy before selling the airline to Lorenzo. This statement was made between 4 and 6 p.m. on February 21, 1986. By 3 a.m. the next morning, however, Eastern was sold to Frank Lorenzo.

True to form, on January 21, 1987, Eastern Airlines, now owned by Frank Lorenzo's Texas Air Corporation, announced that it was demanding a total reduction in earnings of its workers of $490 million or 28.8%. More specifically, he made Draconian demands for an immediate 46.8% reduction from the mechanics, ramp servicemen, custodians and related maintenance classifications. Such reductions would take employees back in time to wages approximating the entry levels which exist for these classifications. According to a report published last month by the Center for Labor Research and Studies at Florida International University, the Texas Air demands would result in a compression of wages unprecedented in modern times. As the

report states: "When past wage concessions are added to the current demands for reduction by Texas Air, Eastern employees are clearly facing the reinstitution of a wage scheme reminiscent of that used by employers in the early Industrial Revolution."

The Florida International University report also poses the often ignored question of whether corporate success brought about by such cruel methods necessarily yields economic stability and growth for the citizens in the areas where the methods are employed. Focusing on Dade County and Southeast Florida, the report concludes that Texas Air's corporate decisions will have negative spread and ripple effects throughout the Miami area. Considering the size of the proposed cutbacks ($181 million in the Miami area alone), "nearly every Miami citizen will be adversely affected". After the multiple effect from this initial shock to the local economy has occurred, the total reduction in area incomes will be approximately 2.4 times as great as the Texas Air reduction with non-Eastern employees bearing the brunt of these reductions. It boggles the mind to consider the overall negative economic impact deregulation-inspired corporate decisions have had on regular citizens as well as airline industry employees across the nation in the ten years since deregulation took effect.

It bears emphasis that in 1977 and 1978, we testified that the safety of air carrier operations would be adversely affected if the airlines were deregulated. To our chagrin, this has occurred. Because of deregulation, there are about 30% more planes in service today than there were in pre-deregulation days with an ever decreasing amount of industry mechanics to service an increasingly aging fleet. Because of the hub-type operations now employed throughout the industry, aircraft are utilized to their limits and beyond. The maintenance facilities located at the hubs are required to service many, many more aircraft in a shorter period of time than was true in the pre-deregulation line-oriented industry. Because maintenance is concentrated at the hub, equipment developing defects at away-from-hub points cannot be properly serviced and repairs are often delayed.

The FAA has fewer inspectors today than in pre-deregulation

days. Only after many near misses in recent years (311 in 1982 to 812 last year) has the number of inspectors been increased at all. Prior to deregulation, the industry for the most part monitored itself on safety. However, because of the unbridled, intensive competition set loose in the industry by deregulation, the self-monitoring program of deregulation days has been severely jeopardized. In my opinion, a number of tragedies have been averted because of the practice of Boeing and the other aircraft manufacturers of building into their planes backup systems or secondary systems which avoid many catastrophic incidents when primary systems fail. However, such technology alone will not perpetually protect overworked and undermaintained aircraft.

In our view, air safety has not suffered greater deterioration because of the IAM member mechanic force whose union contract gives them the security to resist their bosses' pressure to cut corners. It is clear beyond doubt that the mechanics whom we represent are not responsible for the procedural violations that are caused by the airlines and the FAA. Whenever our mechanics see any air worthiness or equipment problems, they report them to the carrier and will not release the aircraft involved until they are corrected. Mistakes do occur and under the excessive pressures inflicted upon employees by the carriers' use of the existing hub system, they will continue to occur. As pointed out last year in a Wall Street Journal article, air safety experts fear that "deregulation may have distracted the attention of airline executives from aircraft maintenance. There are pressures to cut labor costs, to reduce forces, and to expand routes." Such pressures are quite natural to the price-oriented competitive arena into which the industry has been thrust rather than the service-oriented competitive environment that existed before deregulation. A clear symptom of the effect of price competition is that between 1980 and 1984, the carrier money spent for maintenance decreased from 8.85% to 7.6% of their budgets while the number of flights skyrocketed. Also symptomatic are the huge maintenance fines levied upon Eastern, Pan Am, American, Western and Continental, which many

experts believe foreshadow tragedies tomorrow.

From the point of view of service, we know that the quality of service to our small and medium size cities and towns has seriously deteriorated. In the words of Washington Post business correspondent Hobart Rowen, "What we have experienced is cutthroat competition that has indeed lowered some air fares on the heavily trafficked routes while service has been abandoned or limited for hundreds of less fortunate communities." 465 communities have lost service in terms of weekly departures or available seats and 150 have lost all service. By the end of 1986, over 350 communities were experiencing drastically reduced service with the hardest hit being the small and medium sized cities in rural areas.

When the issue of deregulation was before the Congress in 1977 and 1978, an argument often used in its support was that under regulation the long-haul travel between major city pairs of points subsidized the travel to smaller cities and between smaller cities. The reverse has now taken place. Under deregulation, one can travel on a jet aircraft across the entire breadth of the United States much cheaper than one can travel 200 or 300 miles between two small cities; and, because air carrier service is now based on hub operations, passengers often have to travel twice as far to arrive at their destination simply because the aircraft must take them to a hub, have them change planes, and then proceed to their destination via another spoke of the hub. The obvious inconvenience caused by these cutbacks in service was highlighted by Senate Majority Leader Senator Robert C. Byrd (D - W.Va.) in an article last November in the Los Angeles Times. His frequent day trips to meet with his constituents now take two days since "you cannot come back to Washington after dinner."

The problems airline passengers have with the quality of post-deregulation service by no means end with a loss or lack of route service. During January to June, 1986 the highest number of consumer complaints filed with the D.O.T. dealt with flight delays and problems. During this time period the F.A.A. reports that an average of 1050 daily delays were experienced nationally,

as opposed to 914 incidents during the first six months of 1985. In addition, the highest number of complaints registered by passengers in December, 1986 were against "no-frill," upstart airlines such as World Airways, People's Express, New York Air and Continental. Are these the new carriers which were to provide more customer satisfaction to win passengers from old established carriers once deregulation took place? Instead of the improvements in all aspects of service promised by deregulation advocates, today's passengers, according to Rep. Guy Molinari (R-NY), are "treated like a herd of cattle."

Despite the lengthy list of problems arising from deregulation, its supporters still find they can point with pride to the lower rates and fares which they maintain consumers enjoy due to increased competition and the magic of free market forces. During the early years of deregulation, coach fares did come down, especially for the discount travellers who now represent 90% of the travelling public. Still, full fare levels increased 153% during the past seven years though the inflation rate was only 67%. At the same time, the existing major carriers met their upstart no-frills competitors by simply matching or exceeding their cheap fares. Many anti-trust experts argue that the majors' response was predatory pricing aimed at driving out competitors. We agree. In 1984, for instance, People Express expanded into several hub markets previously dominated by powerful high fare airlines. Despite much higher costs and full frills, all five of the carriers (NorthWest, Republic, American, Delta and Eastern) temporarily matched People's fares thereby eliminating the threat posed by the newcomer. As was the case with the abuses committed against airline employees, the DOT has, beyond benign neglect, seemed to encourage predatory practices.

Today the major carriers have turned deregulation into monopoly by another name. The respected English publication <u>The Economist</u> notes that "there are worrying signs that market-rigging practices are on the increase again." Foreshadowing things to come, United initiated a 5% system-wide fare hike last year and was matched in October by most other large carriers. Already we are entering a period, in the words of the <u>Washington</u>

Post's Hobart Rowen, when "the one major gain for the flying public -- cheaper fares on heavily trafficked routes -- won't endure, once the five or six surviving big lines knock out all the competition."

Deregulation has failed to interject real competitiveness into the industry. What used to be legalized fares and rates in a stable, high quality industry -- the best air transport system in the world -- are now institutional and privately monopolized fares, rates and practices. Ten years ago, the IAM predicted accurately that deregulation would lead to confusion and ultimately greater concentration of economic power and market control in the hands of a few.

According to the most current figures available, six megacarriers (Texas Air, United, American, Delta, Northwest/Republic and TWA) presently control more than 90% of the industry's market share. The combined nineteen remaining U.S. jet carriers account for less than 10% of the nation's air traffic. Ironically, Alfred Kahn, often called the father of deregulation, is now warning the public of the dangers accompanying this emerging "uncomfortably tight oligopoly."

Mr. Kahn also grudgingly concedes that competition in the airline business may "eventually kill itself off." This has been proven true, especially when it's a case of minnows chasing sharks. The proponents of deregulation vastly underestimated the many advantages which the megacarriers enjoy over their fledgling competitors. Beyond their computerized reservation systems, greater route options, more and better maintained equipment, and higher experience level, the "Big Six" have superior access to deep financial pockets, airport slots and gates, and hub centers.

We have already seen how the megacarriers employ their reserves of wealth to victimize smaller airlines through predatory pricing. Challengers also face a stiff financial challenge when attempting to purchase the take-off and landing slots necessary to operate. At four high density designated airports -- O'Hare, LaGuardia, JFK and National -- the minimum selling price is more than $100,000 per slot. Even when newcomers can afford a slot, gate shortages have been an

effective barrier to entry and expansion. In October, 1986 America West charged that access to Denver is "essentially nonexistent" for new carriers. The airline asked the DOT to condition the approval of Texas Air's bid for Frontier on a redistribution of gates at Stapleton. The DOT declined. Even attempts to service under used, second tier airports are not successful, especially if such service is opposed by the hometown airline. Witness the ill-fated attempt by Skybus to establish a hub at Fulton County Airport in Atlanta. Again, Mr. Kahn: "The limits on . . . [the] landing spots necessary to compete on the popular routes create substantial artificial barriers to new entrants."

Finally, according to Aviation Daily, when current airline mergers are compared to 1985 boarding statistics, it becomes clear that traffic at fifteen hub airports is dominated by one airline (or group of commonly owned airlines). In addition, only a handful of airports feature two competing carriers with Washington's Dulles being the only airport left with three hub carriers.

Given these disadvantages, it is little wonder that 1985 saw the birth of only two new airlines, Skybus and McClain. Today, only a handful of the low fare carriers remain. These survivors mostly serve regional markets at market-level fares. According to Alfred Kahn's data, fifty or so commuter airlines have in just the past few years either merged or entered into special operating arrangements with larger companies. This has "effectively eliminated them" as the "most promising potential challengers of the larger carriers."

Despite the evidence to the contrary, some say Frank Lorenzo and Continental Airlines prove the point that cheap fares-no frills airlines can win in the deregulation game. A close look reveals that after the demise of Frontier Airlines, Lorenzo raised Continental's coach fares out of Denver and tightened restrictions on discounted tickets. In fact, on January 12 Lorenzo filed 50,000 fare changes for his new Texas Air hybrid, including a $10.00 increase in 30-day advance purchase fares, to be effective in May. And Lorenzo made other changes in full

coach or first class fares. It appears Lorenzo has bought into the non-competitive system now that he feels he's comfortably established as a major carrier.

It is true that among the changes Mr. Lorenzo filed January 12 are fare cuts as low as 40% for Eastern Airlines passengers. However, these decreases are temporary and are intended to force out competition and tighten a monopolistic stranglehold on particular markets. According to Florida International University's "Impact Analysis of Proposed Income Reductions at Eastern Airlines":

> The introduction of the fare war during Eastern's strong season is just another chapter in his [Lorenzo's] design to monopolize the market. He is evidently willing to run the risk of lowering Eastern's profits by cutting its revenue during its strongest market period because his current campaign against the employees depends on a continued financial crisis at Eastern . . . . If the balance sheet improved before he got concessions and the corollary objective of weaker unions, his momentum would be lost.

Mr. Lorenzo's deplorable conduct is designed in the short run to economically weaken a single airline he controls to use it as a weapon to lower the costs of all his airlines in the long run. By employing whip-sawing, namely using one set of concessions against another company's employees (upon takeover) to gain cuts, Lorenzo hopes to continue at Eastern a practice he began with his bankruptcy at Continental. With his newly acquired cost advantages in hand, the Florida International University report asserts that Lorenzo will continue in his effort to "acquire enough airlines to control the air travel industry, if only on a regional basis." The report concludes, "when and if he attains [his goal of monopoly control] . . . he will have minimized costs through actions such as wage and benefit concessions, and he will cancel all fare wars in order to maximize profits." As they have done in the past, it will be the American public, industry workers and customer alike, who will pay the price for Mr. Lorenzo and the other megacarriers' oligopolistic success.

What has been the response of the DOT to the many antitrust issues raised by the present consolidation occurring in the airline industry? It can be truthfully said that the DOT has yet

to meet a merger it did not like. When two Minneapolis-based airlines, Republic and NorthWest, proposed a merger, the Justice Department opposed the merger, citing more than twenty-four markets from Minneapolis to Detroit in which the two carriers provided the sole service. Said Justice, the proposed merger would cost Minneapolis air travellers anywhere from $3 million to $64 million annually in higher ticket costs. The DOT ignored the Justice Department's recommendation and approved the NorthWest/Republic merger.

In a similar vein, the Department of Justice strongly opposed TWA's bid to acquire Ozark Airlines at St Louis. Their brief to the DOT concluded:

> The merger of TWA and Ozark would substantially reduce competition on the vast majority of city pair markets out of St. Louis. Neither entry by non-hub carriers nor creation of a new hub carrier is likely to provide a competitive check. The competitive harm created by the merger would not be corrected for at least two years, and perhaps longer. During that time, consumers flying to and from St. Louis would be likely to face higher fares and reduced service. Consequently, given current conditions, the merger should be disapproved.

Despite such forceful objections, the DOT permitted the merger to occur.

CONCLUSION

In our testimony before Congress in 1977 and 1978, we predicted that deregulation would have a devastating impact upon the economic and personal lives of the employees in the industry; that it would deprive medium towns, small towns and rural areas in this nation of the quality and quantity of the air transport service they then enjoyed; that the safety of our air travel would be imperiled; and, that the industry would be opened to economic predators whose only objective would be the amassing of the greatest possible accumulation of profit and economic power without regard to the public interest. Finally, we stated that the consumer would end up paying much more for much less. As this statement has shown, to the sorrow of the travelling public and the working men and women of the air transport industry, all these predictions have been and are continuing to come to pass.

During the ten years of deregulation, incalculable damage has been inflicted. Deregulation of the airline industry has reintroduced the law of the jungle. We of the IAM strenuously urge the Congress to rectify a situation of its own making. The IAM endorses the passage of definite legislative measures aimed at the re-regulation of the airline industry. Included among these is the establishment of a zone of reasonable fares, which would prevent carriers from economically exploiting the travelling public through price-gouging and other means.

Furthermore, we believe that the purely competitive anti-trust aspects of a merger should be passed upon by the Department of Justice. All other aspects of the merger should be relegated to the jurisdiction of the Department of Transportation with the exception of the appropriate arrangements for the protection of the interests of employees affected which should be under the jurisdiction of the Secretary of Labor. Unquestionably, the Department of Labor has far greater experience and expertise in employee protection than does the DOT. We also urge that an amendment to the Deregulation Act of 1978 be enacted which would require the imposition of the so-called Allegheny Mohawk conditions in all mergers, acquisitions and route transfer cases as well as an amendment which would provide the employees of this industry a reasonable opportunity to receive the protections they are entitled to under Section 43.

Thank you.

Senator METZENBAUM. Thank you.

Mr. Hitchcock, we are happy to welcome you, sir.

Mr. HITCHCOCK. Thank you, Mr. Chairman. I want to second the views of the other witnesses that these are important hearings, and I, too, agree with the comments that you made in your opening statement.

Senator METZENBAUM. Do you want to identify yourself?

Mr. HITCHCOCK. Surely.

Senator METZENBAUM. Do you speak for yourself or for a group?

Mr. HITCHCOCK. Yes. I am Con Hitchcock. I am Legal Director of the Aviation Consumer Action Project, which is the only non-profit consumer group that works full-time on airline issues, and I have been involved in these questions for the last ten years now.

Senator METZENBAUM. Bring the mike a little closer, please.

Mr. HITCHCOCK. Surely.

1986 will be known as the year of the incredibly shrinking airline industry. I will not go through the list. Suffice it to say that the industry is getting a lot smaller, and that poses a real threat to the traveling public.

Deregulation has taken a lot of the blame for recent events, but I think that is a bum rap. When Congress passed the law, it removed government controls over routes and rates. It did not intend to deregulate such things as safety, consumer protection, or antitrust enforcement, but the current wave of mergers suggests that that has happened with respect to antitrust, and I will talk about consumer protection later.

Deregulation was supposed to mean more airlines offering consumers more choice and more competition, and that is why we supported it. We wanted consumers to have the opportunity to take their business elsewhere if a given airline was not doing the job right.

During the first few years of deregulation, this happened, and Professor Kahn has mentioned the studies We cited one of them in our written statement, a GAO report that concluded in late 1985, and I quote, "Increased competition is making airlines more efficient and responsive to consumers."

Then the tidal wave of mergers hit, and I doubt the same conclusion could be drawn a year from now. The four largest airlines have increased their market share; the ten largest airlines, which had 87 percent of the market before deregulation, declined to about 73 when the CAB went out of business, and now have, as you pointed out, 94 percent of the market. Instead of ten firms, there will only be nine firms if the Piedmont and U.S. Air merger goes through.

There are also additional problems that Professor Kahn mentioned of ground-side consolidation, limitations on slots, and the like.

Now, what does this mean for the traveler? In the short term, and possibly for much longer, mergers mean chaos for passengers. The press has reported on problems faced by Continental's passengers as the company tries to train people on using computer reservation systems, and baggage problems are also rampant. The Northwest/Republic merger has also had similar problems.

Concentration can also mean a decline in service quality. Suppose you live in St. Louis and do not like what TWA did to you on a recent flight. How easy is it to take your business elsewhere, considering TWA is dominant at that airport. And what incentive does such a dominant airline have to upgrade the quality of service?

There is a related concern that you alluded to a little earlier, and that is concentration of an airline in certain regions of the country, if you let airlines dominate certain hubs in certain areas. With a lot of airlines in the field, they may compete with each other to draw passengers through Dayton, for example, as opposed to drawing them through Pittsburgh. What happens if those airlines all become under common control?

Let us talk about fares for a moment. As Professor Kahn mentioned, every study of deregulation has shown that the number of carriers in a market makes a difference and that the more market share an airline has, the higher its prices tend to be as opposed to its smaller competitors.

Now, I believe that fare wars will continue to break out from time to time, but the problem is if the industry is dominated by a few large firms, the level of price competition will be less intense.

The real push for low fares in this industry came from new airlines that were trying to elbow their way into the market. Most of them are now merged into larger companies which have higher costs than the new entrants, including, of course, the debt they had to undertake to finance all these acquisitions.

In short, the policies of the Department of Transportation started the airline industry down the road to oligopoly, which is the opposite direction of what Congress intended when it enacted deregulation in 1978.

The warning signals were up when the Pan Am/United route sale was first proposed, a proposal to make the largest company in the industry even bigger, and the response should have been easy to predict. It is why we need tough enforcement of laws such as Section 7 of the Clayton Act.

Now, we come to the question of what can Congress do at this point. There are several options. Your bill is an important proposal to get tougher antitrust enforcement to make the airline industry subject to the Sherman and Clayton Acts rather than the current melange of Sherman and Clayton and Bank Merger Acts.

We also urge Congress to seek a moratorium on mergers in this industry. DOT has not given any clear signal as to what kind of merger it regards as unacceptable, and even if one looks at the recent trend without any alarm, is there really any reason to believe that the public will be better off if we have more mergers and fewer airlines in the future?

The merger also heightens the need for Congress to look at some other issues. The computer reservation systems which are dominated by a few carriers is a subject of considerable concern. DOT is looking at the issue now to try to deal with the abuses, and that is something Congress may have to deal with because ultimately we may have to move toward divestiture and having a single, unbiased, industry-wide system.

There is also a need for stronger consumer protections. If airlines are going to be fewer in number, if consumers are going to have

more limited choice, then we need to do more to beef up protections in this area.

DOT rules on such things as smoking and baggage liability and overbooking could be beefed up. We filed a petition two weeks ago to require better disclosure of how many seats are available when airlines are advertising fares.

Delays and cancellations are a problem as well. There ought to be disclosure of the delay rate of individual flights so consumers can compare which airline has a better record. The problems of economic cancellations that Senator Specter mentioned are very real. We are calling upon the Department to do a better study and better data to find that out. It would also be interesting to know which airlines have the most trouble operating their flights because of alleged mechanical reasons.

In conclusion, the recent experience is unfortunate in many ways, but it would be useful if it teaches us the important lesson that the best safeguard against oligopoly is prevention and that the public is best served by enforcing the antitrust laws.

I am reminded of the current campaign against drug abuse where one frequently hears the slogan "Just say no." I think that advice applies here as well. Mergers are a narcotic and corporate America is hooked. What is happening in the airline industry shows how that addiction can be harmful to the public. If we are going to stem that tide and cure the addiction, we need an administration that will just say "no." Unfortunately, DOT has just said "yes," and the public will be paying the price for years to come.

Thank you.

[The prepared statement follows:]

STATEMENT OF CORNISH F. HITCHCOCK,
LEGAL DIRECTOR,
AVIATION CONSUMER ACTION PROJECT

Mr. Chairman, members of the Subcommittee:

On behalf of the Aviation Consumer Action Project (ACAP), I appreciate the invitation to testify this morning. ACAP was founded by Ralph Nader in 1971 and is the only non-profit consumer group working full-time on aviation issues. I have been associated with ACAP since 1977 and have worked on issues involving deregulation, airline mergers and what they mean for passengers.

At the outset, Mr. Chairman, we want to commend you for taking the lead on an issue that is very important to the travelling public. Antitrust is usually regarded as a dry subject of little importance to the public. That is not true, as recent developments in the airline industry make clear.

The consolidation now taking place in that industry threatens to produce higher fares and poorer service for the public. This result was not an inevitable product of economic deregulation, as some have argued. Indeed, the current trend could easily have been arrested if the Administration had not rubberstamped every merger proposal that came before it recently. The record of what has happened recently in the airline industry -- and what is likely to happen in the future -- demonstrates why consumers have a vital stake in seeing that antitrust laws and similar consumer protection laws must be vigorously enforced.

1986 will be known as the Year of the Incredibly Shrinking Airline Industry. While some mergers had previously been approved, an unprecedented round of consolidations was kicked off with Pan American's sale of its Pacific routes to United early last year. Northwest then acquired Republic, thus gaining over 80 percent of the market at Minneapolis-St. Paul and over half the market at Detroit. TWA acquired Ozark, thus securing 75 percent of the market at St. Louis. Texas Air (which owns Continental and New York Air) acquired Eastern and then People Express (which itself had absorbed Frontier and two commuter lines), thus becoming the largest airline company in the country. And that was not the end of it. American bid to acquire AirCal. Delta merged with Western. USAir moved to acquire Pacific

Southwest, and it recently bested TWA for control of Piedmont.

These are probably the best known mergers, and they reflect the prevailing industry wisdom that internal growth is not enough, that an airline must merge in order to survive because soon there will be only six airlines dominating the business. That is why airlines are buying their competitors, in order to expand into new regions and to compete for passengers in every part of the country.

One other trend is worth noting. While airlines have been merging in order to expand their operations into new geographic regions, they have also been merging in order to enter markets in their own regions which they previously found too small to serve with jet aircraft. Thus, they have been buying or entering into joint operating relationships with smaller commuter airlines -- renamed American Eagle, United Express and the like -- which "feed" traffic to and from smaller communities to the major airline's "hub" city.

This situation poses a very real threat to the travelling public. The Airline Deregulation Act has taken a lot of the blame for recent events, but that is a bum rap. When Congress passed that law in 1978, it only removed government controls over routes and rates. Congress did not deregulate safety, it did not deregulate consumer protection, it did not deregulate noise controls, and it did not deregulate the antitrust laws.

Airline deregulation was supposed to give consumers more choice and more competition, and that is why ACAP supported it. A frequent complaint prior to 1978 was that individual airlines dominated particular routes and that consumers had no alternative when service was poor. They could not take their business elsewhere. Deregulation was supposed to change that, by opening the door to new airlines wanting to enter the business, an important reform since the CAB had turned down all new applicants for the previous 27 years. Deregulation was also intended to give airlines freedom to expand into each other's markets and to compete with fares which could not have been offered previously.

During the first few years, all of that happened, and concentration in the industry declined. In 1978, the four largest

firms (United, American, Delta, Eastern) had 57.4 percent of the market (measured in revenue passenger miles), and the ten large "trunklines" had 87.3 percent of the market. By the end of 1984, the four-firm share had eroded to 54 percent, and the trunklines' share dropped to 73.3 percent. During this period, new airlines increased their market share from 1.1 percent to 9.1 percent.

This increased competition benefitted the public, as GAO found in a report dated 6 November 1985, from which these figures were taken (GAO/RCED-86-26). After surveying the experience since 1978, GAO concluded that "Increased competition is making airlines more efficient and responsive to consumers," noting:

-- fare increases were lower, on average, than what might have been expected under continued regulation;

-- the numbers of flights and available seats increased;

-- airlines have been more responsive to consumer preferences through a wider range of price/service options; and

-- operating efficiency has increased.

Shortly after this report was issued, the tidal wave of mergers hit, and I doubt that the same conclusions could be drawn a year from now. According to the 30 January 1987 issue of Aviation Daily, and based on figures compiled through the end of 1986, DOT's approval of the current merger applications will give the four largest airline companies (Texas Air, United, American, Delta) 61.1 percent of the market; the ten largest firms (reduced to nine, if the USAir-Piedmont merger is approved) will have 94.6 percent. Thus, the industry is more concentrated now than it was before passage of the deregulation act in 1978.

What does all this mean for the consumer? There are several answers, none of them encouraging. In the short term (and possibly for much longer) mergers mean chaos for passengers, as airlines undertake the difficult task of integrating two or more companies into one. The press has reported on problems faced by Continental's passengers as the company struggles to train people on how to use its computer reservation system, and baggage problems are rampant. The Northwest-Republic merger has also been a fiasco, with reports of passengers missing flights and losing their baggage. This turmoil should not have surprised the

industry or DOT. One has only to recall the 1980 merger between Pan Am and National, which was supposed to strengthen Pan Am's international routes by adding a domestic route system, but which turned out to be a disaster which, if anything, left Pan Am in worse shape than it was before.

Concentration in the industry can mean a decline in service quality. Suppose you live in St. Louis and do not like what TWA did to you on a recent flight. How easy is it to take your business elsewhere, given TWA's dominance at that airport? And how much incentive does an airline with a dominant share of the market have to maintain a high level of service when it knows that a new competitor is unlikely to muscle in on its turf?

By allowing airlines to merge their way into a position of dominance at key airports, the Department of Transportation has heightened the practical difficulties faced by new entrants. Simply stated, there is a limit to the number of gates, counters, hangers and other ground facilities that are available at any airport, particularly one dominated by an airline using that facility as its hub. As a result, a new entrant may find it hard to enter such a market in a big way, and it may have to find a special niche if it wants to survive with its larger competitor.

A related concern is concentration not only at individual cities, but also in certain regions of the country. As airlines develop cities as "hubs" for their operations, then "inter-hub" competition between airlines becomes increasingly important. One example of such competition is American's decision to develop Nashville as a hub in order to give passengers an alternative to going through Atlanta. Problems arise, however, if a merger gives a single airline a dominant position at several hubs in a particular region, as it will have greater power to influence how much competition exists between cities in that region. For instance, Northwest's strong position at Minneapolis and Detroit may limit or at least contain any competition on routes between cities east of Detroit and cities west of the Twin Cities.

What will concentration mean for fares? As the preceding comments suggest, the prospects are not encouraging. As CAB Chairman Alfred E. Kahn said in the Washington Post early last

year, every study of deregulation that was conducted over the past few years has shown that the number of carriers in a market does make a difference. The point is illustrated in one of those studies, Deregulating the Airlines (MIT Press: 1985), which was written by Elizabeth E. Bailey, one of Kahn's former CAB colleagues, and two senior CAB staff economists. They found (at p. 169) that "a carrier's fare is positively related to its departure share. Thus average fares are not only higher in concentrated markets, but within concentrated markets the leading firms have higher fares than smaller firms."

Their study also indicated that an airline with a departure share of 50 percent at a given airport will charge a fare approximately seven percent greater than a carrier with a departure share of 25 percent. This outcome was attributed to the fact that consumers (particularly business travellers who value frequency of service) may prefer to fly on the airline with the most flights, while smaller carriers need to offer lower fares or more discounts to overcome this advantage. Id. at 169-71.

To be sure, fare wars will still break out from time to time. However, if the industry is dominated by a few large companies, the level of competition will be less intense than in the past. The real push for low fares in this industry came from new airlines trying to elbow their way into the market. Most of those airlines are now merged into larger existing companies, which have higher costs than new entrants (not to mention the debt which they undertook to finance this recent wave of acquisitions). Indeed, once People Express was formally merged into Continental last month, fares out of Newark rose. Thus, when fare wars do occur in the future, it is likely that fewer seats will be available at deep discount prices and that they will be encumbered by restrictions which make them more difficult to use.

In short, the policies of the Department of Transportation have started the airline industry down the road to oligopoly, precisely the opposite direction that Congress intended when it enacted economic deregulation in 1978. The recent experience in the airline industry is a textbook example of why consumers need vigorous enforcement of the antitrust laws, particularly laws

such as section 7 of the Clayton Act, which is intended to nip any tendency towards concentration in the bud.

The warning signals were clearly up when Pan Am sought to sell its Pacific routes to United. DOT was being asked, in effect, to approve a deal which would make the largest airline in the country even larger. The reaction of United's competitors should have easy to predict. Northwest, which was Pan Am's major U.S. competitor on these routes, promptly acquired Republic because it felt it could not compete with United's strong domestic system in feeding passengers onto its Trans-Pacific flights. Indeed, Northwest made it perfectly clear during the Pan Am-United case that it would seek a merger partner if the sale were approved, and Northwest was true to its word.

The message was clear to every other airline as well. The rules had changed; merger proposals that would have been laughed out of the room a few years ago will sail through today, so if you want your company to survive, you better buy or be bought. Even American, whose chairman consistently spoke in favor of internal growth, succumbed to this pressure and bid for AirCal as a way to bolster its position in the western United States.

What should Congress do? There are several steps which would minimize further concentration and limit the damage that has been done to date.

DOT's authority to review mergers under section 408 of the Federal Aviation Act will expire in December 1988, at which point, airline mergers will be scrutinized by the Justice Department the same way that mergers are in other industries. It has been suggested that this authority should be transferred to the Department of Justice for the balance of that period. Since Justice was more skeptical of some past mergers than DOT was, that approach might eliminate any egregious proposals that have yet to be offered. A better approach would be repealing section 408, effective immediately. Such a move would tighten the standard of review to be applied to airline merger proposals, which is now a melange of standards from the Sherman, Clayton and Bank Merger Acts, under which anti-competitive mergers may go forward if there are "significant transportation conveniences and needs"

that could not otherwise be met. This reform would make it clear that the traditional Sherman and Clayton Act standards apply.

We also urge Congress to seek a moratorium on mergers in this industry. DOT has not given any clear signal as to what type of merger it deems unacceptable. Even if one views the consolidations which have occurred to date without much concern, is there any reason to believe that the public will be better off by allowing this merger wave to continue? If DOT is not willing to draw the line here, then Congress should.

The current merger wave also heightens the need for Congress to examine some related issues. One important antitrust issue is the market power wielded by companies which have developed their own computer reservation systems. This question is important to consumers, because travel agents are largely computerized these days, and these systems can be subtly biased in favor of the company which developed them. Thus, if a consumer calls an agent who uses United's Apollo system, he or she may receive information that differs from what he or she would obtain by calling an agent who uses American's Sabre system. Thus, consumers can be steered towards a particular airline without learning about other flights that might be more convenient.

In 1984 the CAB issued rules (which DOT subsequently inherited) which are designed to prevent some of the worst abuses. DOT recently asked the industry for information in order to reexamine the issue, and it may take further regulatory action. This is an area which the Subcommittee should continue to monitor, to see how effectively these systems can be regulated. Ultimately, the best solution may be legislation requiring airlines to divest themselves of their individual systems and to establish an unbiased, industry-wide computer reservation system.

The current merger wave has also underscored the need for stronger consumer protection regulations, and this is an area both Congress and DOT should address. DOT presently has rules regulating in-flight smoking, baggage liability, overbooking and charter tours. Each of those rules can and should be tightened up, and DOT should be encouraged to do so by rulemaking.

Travellers need help in coping with other problems as well, particularly as mergers diminish a consumer's ability to take his or her business elsewhere. Let me give some examples.

Two weeks ago, we petitioned DOT to set standards specifying how many airline tickets must be offered at the advertised price if the carrier is going to avoid liability for unfair or deceptive advertising. DOT is supposed to enforce the law against such practices, but it has no official standards telling airlines what they can and cannot get away with here. Our filing came in response to complaints from passengers who tried to various bargain fares, but found that none were available at the advertised rate. If an airline wants to promote a fare on the basis of price, then consumers should have a realistic opportunity to get that fare if they act diligently; if an airline wants to limit the availability of a fare to off-peak hours or slow travel days, or if it wants to limit discount travel to popular vacation resorts, it should tell the public.

Another problem which needs to be addressed is that of delays and cancellations. One way to deal with the delay problem (which would also avoid the anti-competitive problems associated with allowing airlines to sit around a table with each other and adjust their schedules) would be to require airlines to disclose on their computer display terminals and other points of sale the on-time performance of each flight. Such disclosures will give passengers comparative information about how good a job each airline is doing. Thus, if there are three flights leaving for Denver at approximately 5 P.M., the consumer can learn which airline, on an average, has the best record in this regard.

We have also received complaints about flights that are allegedly cancelled for mechanical reasons when it appears that the real cause is a lack of enough passengers to make the trip economical. One difficulty we have in verifying such stories is the fact that airlines reporting mechanical difficulties to the Federal Aviation Administration are not required to indicate what flights, if any, had to be cancelled because of the problem. If DOT started collecting better data on this point, it would be

easier to detect any cancellations which are based on economics, not safety. With improved reporting requirements, the FAA could also get a better idea of which airlines are having the most difficulty operating flights because of mechanical reasons.

Airlines will doubtlessly object to these proposals on the ground that enhanced consumer protection is inconsistent with deregulation and a competitive marketplace. That is untrue. Consumer protection, in the form of antitrust laws and proscriptions against unfair and deceptive practices, is critically important in deregulated, as well as regulated industries. It is the current merger wave which is inconsistent with deregulation and a competitive marketplace.

In closing, if there is a lesson to be learned from recent experience, it is this: The best safeguard against oligopoly is prevention, and that requires strict enforcement of the antitrust laws. I am reminded of the current campaign against drug abuse, where one frequently hears the slogan: "Just say no." I think that advice applies here as well. Mergers are a narcotic, and corporate America is presently hooked. What is happening in the airline industry demonstrates how that addiction can be harmful to the public. If we are going to stem the tide and cure that addiction, we need an Administration with the will to "just say no." When, as here, DOT has just said "yes," travellers will be paying the price for many years to come.

Thank you.

Senator METZENBAUM. Thank you, Mr. Hitchcock. You mentioned something about consumers' rights, and I had earlier indicated that I would introduce his Airline Consumer Bill of Rights Act today. I do not believe that I will introduce it today, but I will probably introduce it the early part of next week.

Professor Kahn, you made some observations about costs and you indicated that costs had dropped 28 percent in real terms. You did not address yourself, however, to the question of individual costs, the cost to fly from Washington to Nashville, from Washington to Cleveland, from Dayton to Pittsburgh.

So you cannot just put in all of the costs together because we know that costs to fly from New York to Los Angeles or Washington to Los Angeles have dropped. That has considerable impact upon the total.

But what about deregulation and the impact that it has had upon costs for the smaller cities of America or the less traveled routes of America?

Mr. KAHN. Well, I was careful in my written statement to observe—I guess I said it orally as well—that it is the overwhelming majority of travelers who travel on the dense routes who have benefited, and the average is not lacking in significance as a measure of what has happened to the overwhelming majority of travelers.

In my statement, I point out that that is certainly not as true as on less dense routes. I mean, it is probably not a good idea to fly from Montgomery, Alabama, to Billings, Montana. Fortunately, most people are sensible enough not to do that.

Even there, however—I mean, I live in a very isolated community, but I can drive to Syracuse, which is 50, 60 miles away, until we have this prospect of a merger of U.S. Air and Piedmont, who are my two main carriers out of Syracuse, and that is why I feel very strongly about that antitrust aspect.

Most of us do have alternatives. I think that it is possible that communities that feel that they are getting service at prices way above cost might bestir themselves to sign a contract with an airline over some period of time and say why do you not come in and give us better service and we will guarantee you a certain amount per year.

There are alternatives available. I do not think that it is desirable to go back to regulation.

Senator METZENBAUM. Professor Kahn, if the city of Mobile, Alabama, were to sign such a contract, what would prevent some other airline coming in there and low-balling the rate, and how could the city of Mobile keep them from doing that?

Mr. KAHN. Well, they could not keep them from doing it, but if, in fact, there is very bad service in Mobile, then I would think that there would be an unsatisfied public there who would respond to a well publicized contract between the city and some airline.

I mean, if you are raising the possibility that someone who finds it unprofitable to serve that town now will want to go in and lose money in order to drive out some competitor when they do not want to be there either, that seems to me highly irrational, besides which antitrust laws are supposed to prevent predation.

One of my other quarrels with this Administration is it does not think there is such a thing as predation. I am not as silly as to believe that.

Senator METZENBAUM. From your testimony, it appears that you would support sunsetting Transportation's merger approval authority immediately. Do you also support sunsetting Transportation's authority under Section 412 to immunize agreements among airlines?

Mr. KAHN. Absolutely, yesterday.

Senator METZENBAUM. You note that strong antitrust enforcement is necessary to protect competition in the deregulated airline industry. Am I correct in assuming that you would not have granted the airlines immunity to engage in scheduling talks, and what other steps do you think the Department should have pursued instead of joint talks?

Mr. KAHN. Two or three years ago when this first came up, I wrote to the Chairman of the CAB and begged him not to extend the antitrust immunity. The whole theory of deregulation is that you do not extend that immunity except where there is no other less anti-competitive method of achieving the same purpose.

For years, we have talked to FAA. Back in 1977–1978, we talked about desirability of getting variable landing fees, auctioning off limited slots. That is how you take care of scarcity.

There is no reason why people who are willing to pay the scarcity value of going to congested airports at convenient times should have to sit and wait for an hour, hour-and-a-half to take off. They should pay the price.

The FAA, charging for access to the traffic control system, should take those funds and use them to subsidize flights off-peak. We could even have negative landing fees: I do not want monopoly-charging of customers. Charge high rates when they are scarce, negative rates when they are plentiful. That is what we do in electricity, that is what we do in telephones, that is what we do with Rembrandt paintings. We do not give art dealers an immunity from the antitrust laws and tell them to get together and divide up Rembrandt paintings. We let the price system take care of it.

I am astounded that an agency in this Administration should so thoroughly fail to understand the principles of free market. There are people in OMB, there are people at the Department of Justice, there are people at the Federal Trade Commission who would be glad to give the Department of Transportation a lesson in elementary market economics, and they clearly need it.

Senator METZENBAUM. How do we address other problems of the airline industry—delays, cancellations, poor maintenance, lost baggage, overbooking? What would you do about that?

Mr. KAHN. Well, I think we never intended to deregulate consumer protection, provided consumer protection is not construed as old-time regulation, restriction of competition, protectionism.

But most of this is false advertising in one way or another. I observed with some interest that Senator Danforth suggests it is false advertising when airlines schedule 47 flights at eight o'clock in the morning when they know perfectly well they cannot take off.

Now, the main solution for that, I have already suggested, restrict the slots, auction them, have high landing fees. But most of this is false advertising.

Senator METZENBAUM. I cannot quite agree with you because poor maintenance does not have to do with false advertising. Lost baggage does not have to do with false advertising. I guess overbooking and cancellations would, and delays would.

Mr. KAHN. Yes.

Senator METZENBAUM. But what is concerning me is that this industry that is getting more powerful, larger, more concentrated, at the same time is, as it goes up in concentration, going down in service to the public.

It is not only an antitrust problem because the mergers already completed are a fait accomplis; that is behind us, although there may be more coming in the future. What I am concerned about is how we protect the public now that those mergers have occurred and the service is short-sighted.

Mr. KAHN. Senator, you are perfectly right; I was too glib. A great deal of it is false advertising, and I think quite properly handled by agencies like the Federal Trade Commission; that is, if we can get the present Federal Trade Commission to attack false advertising.

But, second, I quite agree that you, in effect, have a contractual arrangement here, or a quasi-contractual arrangement, and that there has to be some mechanism for enforcing those contracts in a way that the individual traveler is not able to do.

Senator METZENBAUM. You talk about auctioning off the slots and you talk about new competition coming in, but you cannot buy the slots; you cannot get the slots from the people who own the airport because they have given them out to individual airlines.

Now, if I want to start a new airline to fly from Washington to New York, or from Washington to Boston, I do not have any place to land, I do not have any place to take care of the passengers.

And my question to you is how do we deal with that problem, because those are very heavily traveled routes?

Mr. KAHN. Well, I think there are two ways, both of which I suggest in my statement. The first, of course, is that we have $5 billion accumulated in the airport and airway trust fund which is going to meet Gramm-Rudman, for all I know. That is what I referred to as a negative user or reverse user fee. We travelers are paying for it; we are not getting the expansion to capacity to which we are entitled.

But, second, those slots are always going to be scarce as long as we under-charge for them, and the demonstration of business people, travelers who have to travel at a certain time, being forced to sit in airplanes for an hour and two hours waiting to take off is a proof that we are not pricing correctly.

Senator METZENBAUM. But I do not think they even sold those slots at LaGuardia and Kennedy, if my recollection serves me right.

Mr. KAHN. That is right.

Senator METZENBAUM. I think they were just awarded to the airlines.

Mr. KAHN. That is right.

Senator METZENBAUM. So they got no income from them, but now if some other airline wants to get a slot, they have to buy it from the airlines.

Mr. KAHN. That is right.

Senator METZENBAUM. And my question to you is should there be a part of the Aviation Act where we allocate funds—should we specifically provide that any airport that receives those funds shall not be in a position to award slots on a permanent basis which then can be sold?

Mr. KAHN. Well, I think there are really two separate questions. One is who is going to appropriate those rents that exist because of the scarcity of those slots. I mean, set aside the urgent necessity for expanding capacity, because you can expand capacity and the FAA has surely not done enough.

But, second, if the slots are scarce, then there is no way in which you can have more available than are there. So all you can do is, one, prevent exploitation of travelers by having those dollars, the value, appropriated by the government or by the airports with high landing fees, and insist that then use those funds to subsidize other airports.

I would not mind having the cost for shuttle travel between Washington National Airport and LaGuardia double in price if that is a fair reflection of the value of those Rembrandt paintings; on the other hand, have minus fees, which competition would then force to be translated into much lower fares for price-conscious, economy-minded travelers who would then respond by going off-peak or go to Dulles or to Islip or to Newburgh. The problem is that we just are not applying market principles.

Senator METZENBAUM. Thank you.

Mr. Winpisinger, give me your overall evaluation of safety of air flight today as compared to that which it was prior to deregulation.

Mr. WINPISINGER. May I preface, Senator, any statements on that subject with the notation that, obviously, representing people throughout the industry, we hear a lot of things that go on.

We do not believe that identities or, in fact, all of the incidents ought to be made public because if anybody does, given the free market apparatus and operation today, they are subjected to disciplinary actions, including loss of their jobs for coming forward.

In addition to that, it creates a negative image for the carrier for whom they may work and jeopardizes their own job security. But I do not think there is any question, given the traffic controller apparatus and maintenance on the ground, that it has deteriorated.

We have seen a whole series of record fines of some of the largest and formerly most reliable carriers in the safety arena that surpass anything that has ever happened before—Eastern Airlines, $9 million, and things of that kind; American, Pan Am and others fined horrendous amounts of money for either safety violations or oversights of one kind or another. I do not think there is any question that it has deteriorated. What we hear from our people on the inside is that it absolutely has.

Senator METZENBAUM. One last question and then I will call upon Senator Humphrey.

Have you reported any safety violations to the FAA or filed any formal complaints?

Mr. WINPISINGER. Recently?

Senator METZENBAUM. Well, I guess recently; over the last several years.

Mr. WINPISINGER. Over time, we have. I could consult with my staff and find out about the specific period since deregulation. But when I handled this responsibility for our union many years ago, I used to make a regular appearance at the FAA over things of that kind. We carried on a daily, ongoing liaison with FAA. I do not know whether that still persists or not; I doubt it.

Senator METZENBAUM. Thank you very much.

Senator Humphrey, we are happy to have you with us this morning.

Senator HUMPHREY. Thank you, thank you.

Well, Mr. Chairman, air travel involves a great many services, one of which is provision of parking at airports, and it seems to me the rates charged for airport parking around the country are just outrageous.

Senator METZENBAUM. I want you to know I have been out of that business for over 20 years. [Laughter.]

Senator HUMPHREY. I am wondering when we might have some antitrust hearings on monopolies in airport parking. [Laughter.]

Senator METZENBAUM. No problem with me.

Senator HUMPHREY. I note the graph shows that the majority of complaints of airline passengers these days are cancellations and/or delays. Historically, the principal cause of such delays is weather, but at the same time there are new factors which are adding to the length of those lines—congestion of departures, congestion in scheduling, as a number of the witnesses have pointed out.

Mr. Kahn, I am glad to hear that you are an outspoken advocate of deregulating scheduling, if you will, an outspoken advocate of letting market forces unsnarl the scheduling snarls. I think that is an excellent idea.

I, too, lament the fact that the administration has not moved on what is such a simple, equitable means of reducing these delays. There is a value in traveling at peak time; people ought to pay that value.

Those traveling at trough times, or whatever the opposite is, ought not to be paying the same fares as those traveling at peak times. There is no more equitable or simple way to do it than to auction off these departure times. I think that is an excellent idea.

Mr. Hitchcock, how do you feel about that as a consumer advocate?

Mr. HITCHCOCK. Well, in a sense, I am torn by that. I mean, to some extent it is going on already; just the fact that if you want to fly out of an off-peak airport like Dulles or Baltimore, there may be cheaper fares.

Senator HUMPHREY. Yes.

Mr. HITCHCOCK. Some of the airlines that have gone in have done that already.

I think one of the ways that I mentioned in the prepared statement of dealing with delays is probably better disclosure. If there are three flights leaving at four o'clock for Denver, say, consumers ought to be able to find out which one has the better on-time per-

formance record by calling up the airline, and if one has an 88-percent record, that is better than the one with 76 percent.

I think if that sort of approach is applied, that would help to deal with some of the delay questions. It would give airlines more of an incentive to schedule their flights and to disclose them more accurately than is currently the case, where everybody says the flights leave at four, but there is no way you can push back and get off realistically within that time frame, and that causes some of the concerns.

Senator HUMPHREY. Yes.

Mr. HITCHCOCK. I think some of the problem with delay, too, is attributable to the fact that currently the FAA makes the airlines hold the planes at the gate and take your delay on the ground.

I think in the old days when there was stacking, consumers figured that the delay was not as much of a problem; that something might have come up at the last minute and that is why we are circling over O'Hare for so long.

When you tell people up front that there is a delay because of ATC reasons, they get a little more upset than I think in the previous practice.

Mr. WINPISINGER. Senator——

Senator HUMPHREY. Mr. Winpisinger, I will call on you in just a minute. I want to clarify the answer here, if I may.

Is the Aviation Consumer Action Project in favor of charging a premium for prime-time departure, opposed, or has no position?

Mr. HITCHCOCK. We have not endorsed it specifically, as such. In the context of questions about selling slots and making it available, the proposal there has been for some kind of auction to make the air slots available so that there would be more of a premium on airlines that did want to operate and were willing to pay more for the privilege.

The problem with that, as it is being implemented by DOT, is that it is freezing the incumbents in. It is as difficult for someone to come in as a result of that. It has been more of an incumbent protection device than a new entry device.

Senator HUMPHREY. Did you say you are for auctions or not?

Mr. HITCHCOCK. What I have said is, and what we testified, is that we are for auctions if there is some way of dealing with the problem of giving the airlines that are there a windfall. You are saying to an airline at a concentrated airport, congratulations, you are getting something for free; you are getting valuable slots.

If there were something that was done whereby all slots were auctioned off at the outset and everyone had a fair chance, that would be a situation where——

Senator HUMPHREY. Any party would be free to bid that was a bona fide carrier.

Mr. HITCHCOCK. Yes, as opposed to the situation now where you basically reward airlines for holding on to slots at airports even if they are not using it. All of a sudden, they have a very valuable commodity worth $1 million which they did not have to pay for.

Senator HUMPHREY. But you would not want to open it up to scalpers; that is for sure.

Mr. Winpisinger, how do you feel about this?

Mr. WINPISINGER. I view it as simply one more step toward a non-solution because even if they are auctioned—and let me preface this by saying that I think there is something fundamentally inimical to the American concept of the free market if you market something at a price cheaper than that which it costs you to produce it, and that has been going on with airline seats.

I do not care what the auction might bring in these slot situations. The carriers with established market power, the big guys, the beneficiaries of these mergers and acquisitions, will bid any price to get them and then drive the competition out anyway by simply pricing seats at a level below that which it cost them to create.

That is why we favor at least fair parameters as a basic regulation of some kind.

Senator HUMPHREY. Again, referring to the chart, another one of the explanations of this increase in delays and cancellations is the growing antiquation and inadequacy of the air traffic control system.

Mr. Kahn, what do you think of the idea now of advancing the deregulation of the air transport industry by going another step and deregulating air traffic control, so to speak?

There are a number of proposals around, from completely privatizing the air traffic control system, as apart from air safety regulation, which would remain with the FAA, to having a quasi-governmental federal corporation that would do the same thing to the status quo? How do you feel about that?

Mr. KAHN. I have a good deal of sympathy with that, principally because if the air traffic control system were operated privately, you would then have it priced correctly. One of the anomalies—indeed, outrageous anomalies—of the present situation of charging not on the basis of time or scarcity, but weight, is that a plane carrying one or two corporate executives may land at a four-dollar or a ten-dollar landing fee and take up a space that would otherwise be occupied by 300 people. If those 300 people knew what was happening, there would be rioting in the streets.

Now, I cannot see that if you had a privatized system that they would not charge intelligently, and if a small plane with two people in it uses up just as much traffic control capacity as a plane with 300, by George, they would pay as much as the 300 pay. That is not what we have today. I mean, our present system is insane.

Senator HUMPHREY. What about the supposed, presumed improvement in management that would come by detaching this air traffic control system from the federal bureaucracy in the annual appropriations game and the sequestering of trust funds to make the overall budget look a little bit better?

Mr. KAHN. Well, I think, second, that private operation puts the operator in command of its resources. It does not go through a federal budget process where it gets sullied up by all sorts of considerations that really ought to be totally irrelevant.

It gets financed by its own revenues; it therefore prices intelligently. It expands capacity when it is desirable to do so. I would want to be satisfied that we did not have a problem of monopoly exploitation, then, and that is something I really have not thought through sufficiently.

I would hate to substitute public utility kind of regulation because that often just encourages cost-plus pricing. But I do think the present situation is so slovenly that—also, you see, the private operator would be free to hire some of those traffic controllers back. You would not be bound by this ideological vindictiveness.

Senator HUMPHREY. Mr. Winpisinger?

Mr. WINPISINGER. Well, one thing that occurs immediately to me, Senator, is that since we accord bargaining rights to federal employees, obviously if it is privatized, there will be bargaining rights accorded, and along with it, presumably, the right to strike.

It seems to me it places the system in jeopardy from that point of view, and it also might give rise to the very example used by Mr. Kahn of someone with a private airplane who knows somebody in the private corporation getting preferential treatment in terms of departures, landings, and other things of that type.

Mr. KAHN. It cannot be worse than it is now in that respect.

Mr. WINPISINGER. Well, I do not know. I am not at all sure of that, not at all sure.

Senator HUMPHREY. Mr. Hitchcock, how do you feel about privatizing the air traffic control system?

Mr. HITCHCOCK. Well, I am sympathetic to some of the goals that have been mentioned thus far. There is a question of what do you mean by privatization. I mean, are we turning it into a genuinely private corporation, or are we going to turn it into the Postal Service?

Senator HUMPHREY. Well, there are proposals along each of those lines.

Mr. HITCHCOCK. Yes.

Senator HUMPHREY. I am not advocating any particular one at this point.

Mr. HITCHCOCK. I am not sure that if we have something like the U.S. Postal Service, if we have the U.S. Aviation Service, that that will necessarily make the world a better place in terms of providing services.

The other question really is a question of accountability. Who will this new corporation or system be accountable to? Will it be accountable to just the airlines and general aviation that use it everyday? There are serious questions along that line that I have not really seen fully addressed yet.

Senator HUMPHREY. Mr. Winpisinger, does the IAM have its own airplane?

Mr. WINPISINGER. Yes. That is why if it were a private corporation and we organized it, I would probably get preferential treatment.

Senator HUMPHREY. Do you think you ought to pay the same landing fees as a Boeing 747?

Mr. WINPISINGER. We will pay whatever rate the appropriate authority charges, and if that becomes uneconomical—the only reason we have it, by the way, is because we cannot go where we need to go at a time we need to be there with the commercial system the way it is. Deregulation drove us into ownership of an aircraft.

Senator HUMPHREY. Why do you think the corporate owners have airplanes, same reason, basically?

Mr. WINPISINGER. Presumably, the same reason.

Senator HUMPHREY. Yes.

Mr. WINPISINGER. So we will do the same thing they do. Whatever the appropriate authority sets, we will pay. If that becomes uneconomical and the alternative of lousy airline service is preferable cost-wise, we will go back to flying commercially.

Senator HUMPHREY. Does Cornell have an airplane, Professor?

Mr. KAHN. They had to give it up some years ago.

Senator HUMPHREY. My time is up. May I ask one last question?

Senator METZENBAUM. Sure.

Senator HUMPHREY. I am not only going to stop asking questions, but I have to go to another hearing. With Senator DeConcini's forbearance, Professor Kahn, I was especially interested in your testimony on the concentration of airlines.

However, you do not seem to come to a conclusion. Is it good, bad, indifferent, and if it is bad, what should we do?

Mr. KAHN. The reason I do not is that there is no simple response to your question. In some very important sense, concentration has gone down, not up. If you look at market by market, on average there are more competitors in individual markets, on average, than there were before.

The reason is that under regulation the markets were all systematically divided. Eastern was north-south, could not fly east-west. So in point of fact, at the point where competition works, which is how many alternatives do you have if you are flying to a particular place, on average competition is more intense than it was before.

Entirely apart from the removal of the CAB's restriction on price competition, there is no question that the industry is more competitive. And I do not think we can simply oppose all mergers. When you have an industry that was in a hot house for 40 years and then you expose it to the market, you have to expect a lot of shaking down.

There used to be hundreds of automobile companies. There is not room for hundreds of airlines, but the fact is, also, that as you get to an industry where only eight carriers meet one another in one market after another, then I think the nature of competition may be expected subtly, and maybe not so subtly, to change.

Then I am worried, also, about people in Detroit. They have lousy service now; I see all the complaints. The answer is, well, there is an incubation period while we put this merger together. They are having trouble integrating their labor forces. But if it were not for the merger, there would be somebody else to go to.

So I am sorry that I had to give you a complicated answer. The industry is more competitive. Deregulation was successful, but we do have to apply the antitrust laws.

Senator HUMPHREY. Thank you.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you, Senator Humphrey.

Senator DeConcini, we are very happy to have you here with us this morning.

Senator DECONCINI. Mr. Chairman, thank you very much, and I do have a statement that I will ask to be included in the record.

Senator METZENBAUM. Your entire statement will be included at the beginning of the record.

Senator DECONCINI. I do, however, want to congratulate you on these important hearings. It is something that is long overdue, and I spend a lot of time in the Midwest and I know it is probably a very beautiful part of the country, but when I am there I am very frustrated trying to get to my home State.

It certainly has gotten worse, and the testimony today seems to indicate that we have got some big problems, even though Professor Kahn indicates that, in his judgment, it has worked.

I would like to ask Professor Kahn, and maybe the other witnesses, just one question, and then we will go to the next panel, as far as I am concerned, Mr. Chairman, and that is regarding the computerized reservation service that seems to be dominated by two airlines.

Should there be some consideration of divesting those services? Would that enhance competition? I guess I will put it this way: If it was not dominated by the two large carriers, would that enhance competition with airlines that do not have those computers?

Mr. KAHN. Well, I have testified twice before Congressional committees——

Senator DECONCINI. And if you did that this morning, forgive me, because I missed your testimony.

Mr. KAHN. No, I have not referred to it here. I think that it is time again to think very seriously about divestiture. Mr. Hitchcock has, in fact, addressed himself to that question.

There is some increase in competition in that business now. One of the factors behind all these mergers, an important factor, was the desire, the necessity for getting control of a reservation system. That was the great attraction of Eastern to Texas Air; that was why Northwest has wanted to buy on to the TWA system.

So in the end we may find ourselves with mega-carriers restricted to the available reservation systems. I have not studied it in the last year-and-a-half. There was a very good report by the Department of Justice at the end of 1985 which showed that there continued to be serious impediments to competition by independents in their dependence upon the computerized reservation systems of their major rivals. So I think dissolution continues to be something that ought very seriously to be considered.

Senator DECONCINI. You mean that legislation ought to be considered?

Mr. KAHN. Well, there is an antitrust suit going on. I would be very happy to see the Department of Justice intervene in that antitrust suit and let us get it decided.

Senator DECONCINI. My understanding—and if you know better, please correct me, but I believe it is in excess of 70 percent of the reservations that are controlled by the Apollo and the Sabre systems, which are owned, of course, by two major carriers.

Mr. KAHN. The Apollo and the Sabre systems.

Senator DECONCINI. Mr. Winpisinger, do you have any comment on that, on the divestiture of those computers?

Mr. WINPISINGER. Not really, Senator. I have never thought about it or thought it through in terms of what might make sense from our interests.

Senator DECONCINI. Yes, sir.

How about you, Mr. Hitchcock?

Mr. HITCHCOCK. Yes, a brief comment. It is unfortunate that this issue has been perceived as an intramural squabble between the industry, but it really does affect consumers if you are being subtly steered towards one airline or the other.

I agree with Professor Kahn that it is time to give serious consideration to this. The current system is a throw-back to the days of regulation when a single system was not considered. The analogy that I think fits, and maybe it is not a perfect fit, is that if you as a consumer want to find out what the best fares are, you have to call around and get fares from the different systems. It is sort of like the early days of the century when if you wanted to reach everybody in town on the telephone, you had to have three phones on the desk to make sure you got everybody. Ultimately, the phone system was consolidated and treated more like a public utility, and that has to be considered here.

There are some benefits as the computer systems move into things like hooking you up with rental car companies and hotels, but that raises some serious questions about concentration and domination on a vertical basis.

Senator DECONCINI. You would support divestiture, then?

Mr. HITCHCOCK. I think it is a question that more information is needed on. I think the subject has to be given some serious consideration about some of the consequences.

You are dealing with some fairly rapidly changing technology and it is not clear where it is all going to be going. I think it is a situation where some more information is needed from the DOT investigation that is now going on and some further consideration of these other issues about integration with hotel and rental car companies.

I guess I am wondering whether it is a situation where the regulators will ever be able to stay up with the technology in terms of dealing with the worst abuses. I am not convinced that they are, but there are some tricky issues that have to be worked through.

Senator DECONCINI. Thank you.

Mr. Chairman, I have no further questions here. I would like to, just for the record, just direct my colleagues' attention to the testimony that is going to be offered on the next panel by Mr. Ed Beauvais, Chairman of the Board of America West Airlines, a rather startling review of the consequences of the merger mania in the airline industry.

Prior to the DOT assuming responsibility for review of merger and acquisitions, there were 28 major air carriers in the United States. The six largest carriers had a 62-percent market share at that time. Through mergers and acquisitions since the beginning of 1985, the six largest now have 82 percent of the market, and Mr. Beauvais will address that in his statement.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Senator DeConcini.

Mr. Hitchcock, I just have one question for you. Do I understand that you filed a petition with the Department of Transportation indicating that the airlines who advertise discount rates ought to have at least 10 percent of the seats available?

Mr. HITCHCOCK. Yes, Senator, we did, two weeks ago, in response to complaints we had been getting and a number of stories in the

newspapers about consumers calling up airlines even at 7 o'clock in the morning when their morning paper arrives and not being able to get a seat on a particular plane or any flight that they wanted to that particular destination.

We focused on the fact that the Department of Transportation, which is supposed to be regulating unfair and deceptive practices, does not have any standards. The airlines do not know how close to the line they can come in terms of how many seats must be available.

Our position is that if an airline is going to advertise a fare based on its price, its cost, then there ought to be some standards. I brought down one today which I thought might be——

Senator METZENBAUM. Wait a minute, Mr. Hitchcock. I did not want a speech; I just wanted an answer.

Mr. HITCHCOCK. The answer is yes.

Senator METZENBAUM. Okay. Let me just say to you, when my staff brought me the draft of the Airline Consumer Rights Act, which I intend to introduce, and they had that ten-percent figure in based upon your petition, I chided them quite severely because, frankly, I think to take a full-page newspaper ad or go on the radio and advertise and then have ten percent, I think that is an unbelievably low figure, and I would urge you to reevaluate and reassess your own position. I think ten percent is an absurdity.

Mr. HITCHCOCK. Well, our preference would be for a higher figure and we were hoping that in the course of a rulemaking we could have a dialogue with the industry on what an appropriate figure might be.

I heard of one airline out in the West, I believe from Arizona—I forget the name—which has written a letter to Secretary Dole saying it will offer at least 15 percent on each flight.

Senator METZENBAUM. But you are ostensibly a spokesperson for the passengers. If you come in and ask for 10 percent, how do you expect the FAA to increase the figure to 20 percent or 30 percent?

I am saying to you that this Senator thinks you are off base and not adequately representing your own constituency.

Mr. HITCHCOCK. The short answer, Senator, is that the current Department has not shown much interest in regulating consumer protections, and ten percent is better than nothing, which is what we have now.

I agree with you; it would be nice to have a higher figure, but unless there is interest at the Department in doing more for consumer protection, we will take it one step at a time.

Senator METZENBAUM. Thank you very much. I want to thank——

Mr. WINPISINGER. Might I make one parting comment, Mr. Chairman, please, as yet uncommented upon?

Senator METZENBAUM. Surely.

Mr. WINPISINGER. Based on the travail that the employees in this industry have been through during the period of deregulation, we would welcome with open arms the passage of your proposed legislation and activate the Clayton Act in this connection, simply because if memory serves me—and I have a grossly inadequate education at law, but if memory serves me, one of the pronunciations in the preamble of that act is that human labor is not an article of

commerce, and we would love to see that become the rule of the day.

Senator METZENBAUM. Thank you very much. We appreciate the cooperation of all of you.

Our next panel consists of Kenneth Dettelbach, President of Travaco Management Systems, Inc., of Willoughby Hills, Ohio; Edward Beauvais, Chairman of the Board, America West Airlines; and Barbara Wyatt, of Arlington, Virginia.

I think there is a twelve o'clock cloture vote and so I am going to ask you all to move along rapidly. Mr. Dettelbach, it is nice to see you again, and we are happy to have you with us here this morning. Please proceed.

I am going to limit each of you to four minutes so that I can get to that cloture vote and have a few questions before you leave. Please proceed.

STATEMENT OF A PANEL CONSISTING OF KENNETH DETTELBACH, PRESIDENT, TRAVACO MANAGEMENT SYSTEMS, INC.; EDWARD R. BEAUVAIS, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, AMERICA WEST AIRLINES, INC.; AND BARBARA WYATT, ARLINGTON, VA

Mr. DETTELBACH. Mr. Chairman, Senator, and committee members, my name is Ken Dettelbach and I am President of Travaco Management Systems. We manage corporate travel on a national basis. I would like to thank you for the opportunity to present the corporate traveler's views on deregulation.

Last Thursday, I asked several Fortune 100 and 500 corporation travel managers to meet in Cleveland to lend their comments to this hearing. My text and opening comments are a reflection of their discussions.

Although it is our opinion that deregulation has had many positive effects, it has also produced areas of major concern, as we stated in the text submitted to this Committee. Deregulation has divided the country into two geographical communities, the hub gateway cities and those non-hub geographical locations, the latter of which serves the vast majority of both public and corporate America.

In a deregulated industry that is ruled by predatory pricing and scheduling, the airlines face complex economic equations to ensure bare-bones survival and safety standards. Service in the industry is on the decline in the areas of food and beverage, ground services, and proper consideration and notification of flight delays, cancellations, changes, and/or bumping procedures, and has placed an undue burden on the traveler.

Competitive pricing has dealt a difficult hand to the corporate traveler in three ways, one being the frequent flyer programs that generate some benefit to the corporate traveler, but prove to be costly to the corporate budget and masks the discontent of the traveling public; secondly, the unstructured pricing between non-hub cities as compared to hub-to-hub city pricing; thirdly, confusing, yet high-profile maxi-saver, super-saver fares. Databases provide consolidated airline flight information, but often times do not reflect the real availability and are cost factors.

The proliferation of feeder commuter airlines raises the question of safety of the airways. Now is the time to review the maintenance procedures and frequency thereof, as well as departure schedules at major hub city airports.

Rules and regulations, review and certification procedures applicable to commuter, feeder, major airlines, and retrofitted passenger aircraft, need immediate redefinition and consideration of safety features, the handicapped and emergency requirements.

Municipalities and corporations in non-hub locations have and are being penalized by deregulation in loss of air service critical to economic growth by major airlines vacating and yet holding on to gates to avoid competition.

Deregulation has served the business traveler much more effectively than would have regulation or re-regulation. Yes, deregulation has caused reservation improprieties, flight departure delays and cancellations, reduction of cabin services, confusion in pricing, and CRS bias.

Deregulation to a lesser degree has created some safety issues and negative effects on municipalities. These areas of concern should be addressed and governmental responsibility and authority be redefined.

Resources in personnel, legal tools and money should be provided to those governmental bodies for responsive and continual action.

[The prepared statement follows:]

TRAVACO MANAGEMENT SYSTEMS, INC.
34900 Chardon Rd., Willoughby Hills, Ohio 44094 / 216-942-4950

United States Senate
Subcommittee on Antitrust, Monopolies & Business Rights
of the Senate Committee on the Judiciary

HEARING: Competitive Issues in the Airline Industry

SCHEDULED: March 25, 1987, at 9:30 AM

LOCATION: Room 226 of the Dirksen Senate Office Bldg.

INTRODUCTION: Kenneth Dettelbach and David Werner of Travaco Management Systems, Inc., Willoughby Hills, OH (Cleveland), have combined experience of more than 30 years in the travel industry. Their company consults and manages the travel related services for corporations on a national basis.

SENATORS AND COMMITTEE MEMBERS:

We appreciate the opportunity to be a part of this proceeding because of the interest and concerns of our corporate clients. While we do not feel we can specifically speak to the legalities affecting airline deregulation, we do know from Travaco's experience what deregulation has accomplished. Deregulation of the airline industry created: a better distribution system, better service, profitability for the airlines, competitive pricing, and new competition in the market place but not in the majority of geographical markets. Instead, deregulation has divided this country into two separate geographical communities. First being those cities which are hub and/or gateway cities (NYC, Washington D.C., Dallas, Atlanta, Chicago, Denver, Seattle, Los Angeles) and those which are not, the latter being the vast majority of the geographical locations serving both public and corporate America.

The positives are: the concentration of services and competition in the hub and gateway cities has created competing prices, better distribution of product, and better scheduling; yet, even in these cities, the quality of service is questionable!

Although we have stated there have been positive effects to deregulation, we have three (3) main concerns:

I. The lack of involvement by the Department of Transportation in its review, supevision, and control of the deregulation process as it effects: a) the Scheduling, number of flights/number of air carriers from non-Hub cities, and these effects on the traveler and Municipalities, b) the lack of Service which includes cancellations, overbooking, over-scheduling, seat assignments, food/beverage, and ground services, c) lack of Competitive Pricing, and d) Travel Database Manipulations.

II. The inability of the FAA to supervise maintenance programs due to the proliferation of feeder and commuter airlines created by deregulation.

III. And, the effect of airline mergers and acquisitions on Municipalities and the Corporate survival within those municipalities.

Let's address these three main concerns in detail and we will reference actual examples/data exhibits attached:

I. DOT INVOLVEMENT: a) **Scheduling:** The airlines expect to carry 415 million passengers this year, up 145,000,000 from 1978, (When deregulation was the order of the day). On a daily basis, some one (1) million revenue passengers are carried on 16,000 flights, equal to one (1) take-off every six (6) seconds of each day. Including cargo, charters, etc., there are over 400 air carriers. The airlines have recently gotten together to reschedule peak periods at certain Hub cities. It was determined that a number of air departures within specific time frames from certain Hub cities as displayed to the public were. in fact, impossible to achieve and affects air safety. The airlines today, operate in a deregulated industry, ruled by predatory pricing and scheduling. Thus, airlines face complex economic equations to insure bare bone survival and safety standards.

b) **Service:** Overbooking by airlines is a well known method of obtaining greater occupancy of seats, thus increasing profit. A traveler can have a confirmed reservation and seat assignment on a scheduled flight, show up at the prescribed time for departure, and be refused admission to the flight. This is called "bumping".

Under the old Rule 240, if an individual was inadvertantly bumped from a reserved seat on a scheduled airline, that individual had to be placed on the next available flight of any airline leaving to his/her destination city. Under the now, non-existent Rule 240 as it applies to domestic air travel, the individual who is bumped from an airline need only be put on the departure flight to that destination city with the "same" airline from which he/she was bumped. If, in fact, that airline has no departures until the following day, there is no requirement to house or feed the individual, a cost which the elderly, handicapped, and less-fortunate travelers cannot afford.

In defense of the airlines, we would also point out that the traveler today has the ability not to show up for his/her flight without penalty. This costs the airlines considerable dollars.

It should also be noted that airlines today, without cause or accountability, can cancel flights up to the time of departure and airlines can change the type of plane scheduled to fly and the route it will fly without notification. (Exhibit "A")

Many of the airlines today, are sub-contracting out their ancillary services; such as, food/beverage, ground services, and, in many cases, maintenance. The obvious effects are that sub-contractors' primary motive is profit; the airlines' primary motive is service or product within defined parameters. The ultimate result in the case of food, baggage handling, and other service related amenities is lower quality.

Under the old Rule 240, there was a uniform requirement that airlines treat lost or damaged baggage in a uniform manner. Now under the non-existent

Rule 240, each airline provides a different basis as to how it treats the traveler should their baggage be lost or damaged. This also varies from location to location across the country. It is impossible for the traveling public to evaluate a preferred airline based on each airline's different limitations, such as reimbursement for lost baggage, time to be at the gate prior to departure, etc. See Exhibit "B" attached for the various statements/requirements from major airlines. What is the public to expect and how does it assimilate the variables to obtain reasonable knowledge to make the decision on which air carrier to fly. (Competitive quality comparison)

In addition, the airlines have established separate companies to develop and market the technology of the airline industry. For example: Eastern has created System One Corporation and United has created Covia Corporation which sells hardware and software to travel agencies and corporations. Both of these companies are estimated to do in excess of 300 million dollars in 1987, and are forecasted to be in excess of 1.25 billion dollars in revenues by 1992. Will the next step be for the airlines to sub-contract their planes and crews so that, in fact, they are nothing more than purveyors of technology and databases. (See database manipulation) The implications are profound.

c) **Competitive Pricing:** The business traveler has lost confidence in the pricing practices of airlines. A traveler could fly Cleveland to Atlanta round trip for **$518.00**. IF the ticket was written: Cleveland--Atlanta--Miami, round trip, the fare would be **$269.00**. Therefore, if the traveler wanted to go only to Atlanta, he/she could book the Cleveland-Atlanta-Miami example, get off at Atlanta, discard the Atlanta-Miami/Miami-Atlanta coupons and come back Atlanta-Cleveland and **save $249.00**.

These price examples and inequities are numerous between non-hub cities.

The traveler that does not live in a hub city ends up subsidizing the fares of travelers from Hub city to Hub city. This is due to the lack of non-competitive(discounts) fares actually available in non-Hub cities.

In addition, many of the non-hub cities are now served by what is called Feeder or Commuter airlines, most of which have a direct contractural relationship with the larger air carriers. For example: Delta/ComAir and American/American Eagle, etc. The airfares of the feeder airlines have a much higher fare for shorter distance traveled than do the major air carriers fc much longer distances between Hub cities. (Exhibit "C")

The Brookings Institution found in a comprehensive study the business traveler benefited from fare decreases in distance traveled from:

0 to 499 miles
1000 to 1499 Miles
1500 to 1999 miles
2000 to 2499 miles
2500 to 2999 miles

The only exception being from 500 to 999 miles. (See "The Economic Effects of Airline Deregulation, Morrison & Winston, Brookings Institutions 1986")

Most of Travaco's business travelers travel between 500 to 999 miles,therefore, the pricing has not really benefited the majority of our corporate clients and would venture to say we are "A" typical.

The pricing of lower, highly publicized fares is not complex. For example:

MAXISAVERS

From Cleveland:

to Albuquerque	$79
to Burbank	$99
to New Orleans	$79
to Yuma, AZ	$99 (Exhibit "D")

What is complex is the ability to determine if one qualifies? For example: The following "restrictions" apply to MAXISAVERS

"Stay over Saturday night. Tickets are nonrefundable. Fares are each way based on round-trip Coach purchase. Tickets must be purchased within 24 hours after making reservations but at least two days before travel. Saturday night stay required. Travel must be completed by 5/20/87. Tickets are nonrefundable. Fares are slightly higher on Friday, Sunday, selected peak travel days and certain nonstop flights. Fares are subject to change without notice and other restrictions may apply. Seats are limited. All or a portion of trip may be on an American Eagle® carrier. Surcharges apply from Las Vegas, Boston and Florida."

These fares are not applicable to 99% of the business travelers and to a vast majority of the traveling public. Frequent flyer programs have allowed the qualified corporate traveler to fly for free but these programs have cost coporations, who fund these travelers, substantial dollars.

Frequent flyer programs have masked to a large degree, the business travelers' displeasure with today's airline practices. As these frequent flyer programs become more and more restrictive, how will all of us deal with the increased displeasure, with air travel, of our constituents, under Deregulation.

d) **Database Manipulations:** In the past, the airlines have provided, at a cost to travel agencies and corporations, CRT terminals known as "reservation systems", (under the names of Apollo, Sabre, Pars, etc.) Most of these reservation systems access, what we call in the industry, a consolidated database. For example: Apollo accesses Denver, a database consolidated by United Airlines; and, Sabre accesses Dallas, a database consolidated by American Airlines. (By consolidated, we mean all other airline schedules/pricing, are collected, incorporated, and displayed with the consolidators (i.e. American/United) database. These consolidated databases are then accessed by the various reservation systems. Because of the consolidation process, in our experience, these databases are manipulated to the benefit of the consolidator and to the detriment of the traveler. (Exhibit "E"/"F")

If you were to place a United CRT/American CRT/Eastern CRT/Delta CRT side by side, and you searched the database on each for either, seat availability or pricing, on a specific flight, for a specific date, from or to a specific city; you might receive different displays for the same data item. What is the public to expect as to the veracity of these databases.

II. FFA: The head of the FAA has recently resigned due to limited financial resources and a lack of personnel. You only have to fly to see or experience the lack of maintenance on aircraft. The FAA claims to need an additional 2,000 people to review the maintenance procedures of today's regularly scheduled and chartered airline companies. Because of deregulation, numerous feeder or commuter airlines have been created placing, a burden on the maintenance/safety review process. Let me relate a personal experience: On December 17, 1986, Pan Am flight #0057, flying between Cincinnati and Cleveland, I was sitting in a row of seats that was not attached to the floor of the airplane. After a review of the aircraft, it appeared this plane was retrofitted from a cargo carrier to a passenger carrier. What rules and regulations, review and certification procedures apply to aircraft that are changed from cargo to passenger and to aircraft that have added additional seating without due consideration to safety features, the handicapped, and emergency requirements. This is an extremely explosive area with far-reaching legal and moral implications.

III. EFFECTS ON MUNICIPALITIES AND CORPORATIONS: In some cities, airlines vacated departure gates but continued to lease them on a monthly basis to prohibit other airlines from coming into those cities. In Cleveland, Ohio, United Airlines vacated several gates. In effect, this holds the municipality hostage by creating an irreplaceable loss of service.

The ability to fly frequently in and out of a city is high on the priority of any decision-making list for a Corporation to determine its headquarter site. It also figures intricately in the movement of Corporate Headquarters from city to city. Will the concentration of Corporate Headquarters be determined in the 1990's by the quality of air service?

We believe deregulation has served the business traveler much more effectively than would have regulation or would re-regulation.

Yes, deregulation has caused reservation improprieties, flight departure delays and cancellations, reduction of cabin service amenities, and CRS bias. Deregulation to a lesser degree has created some safety issues and negative effects on certain municipalities.

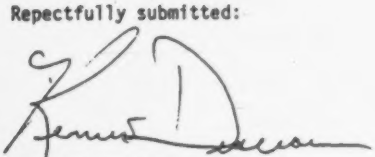
We suggest minimum regulation be implemented by the DOT to deal with the problems created by deregulation. We further suggest that the DOT direct its efforts to control departure delays caused by little regulation of scheduled departures from major cities.

These regulations should be consistent with FAA regulations currently in effect that dictates aircraft departures, flight separation, etc.

Alternative solutions to the congestion problem could be rational pricing policies at airports and technological improvements in traffic control. A peak load pricing scheme would lead to more efficient use of airport capacity and reduce congestion by spreading the demand throughout the day. Improvements in runways and electronic guidance systems would also improve the enroute spacing program currently in effect.

In summary, the areas of concern should be addressed and governmental responsibility and authority be re-defined. Resources in personnel, legal tools, and monies should be provided to those governmental bodies for responsive and continual action.

Repectfully submitted:



Kenneth Dettelbach
President

David E. Werner

David E. Werner is vice president of sales and marketing for Travaco Management Systems, Inc. (TMS). He is the major force behind TMS's consulting operations, and holds additional responsibility for development and implementation of marketing and sales policies. He also oversees operations of Travaco, Inc., a TMS component company involved in corporate travel and travel-related services.

Prior to joining TMS, Werner was a corporate and agency travel consultant, providing travel policy development, implementation and training services for a variety of corporations, including The Standard Oil Co. of Ohio.

He received his travel industry background through his 11-year employment with United Airlines. While there, he was involved in almost every aspect of the industry, including sales, account service and freight management.

# # #

TMS-3001

Kenneth A. Dettelbach

Kenneth A. Dettelbach is the president, founder and owner of Travaco Management Systems, Inc (TMS). He is responsible for overseeing and coordinating the efforts of all TMS component companies including those involved in travel services, software and database information. He is also involved in national sales for TMS.

Before his involvement with TMS, Dettelbach developed and built Centre One Hotel and Conference Center, one of the nation's first complete conference and training facilities for corporations. After four years, he sold the Eastlake, Ohio-based facility and concentrated his efforts on Travaco, Inc., the corporate travel agency he developed and housed in the Centre One facility. TMS component companies, of which Travaco, Inc. is a member, were developed in the years that ensued.

Before developing Centre One, he spent nearly 10 years as executive vice president of Associated Motor Inns, a chain of 19 nationally-located hotels including seven Stouffer Inns and several Holiday Inn properties. During this tenure, Dettelbach was responsible for all facets of the company's hotel and restaurant operations, including bottom-line profitability, and the coordination of all sales, marketing and advertising.

He was also instrumental in developing American Group and Tour Accomodation Service (AGTAS), a separate division of Associated Motor Inns. AGTAS served as the national sales and marketing office, and was also a national packager and hotel representative for over 300 hotels across the country.

Dettelbach is a graduate of the University of Pennsylvania's Wharton School of Business, and holds a Juris Doctorate from Western Reserve Law School.

# # #

EXHIBIT "A"

The attached letters and computer database history of transactions show on February 2, reservations were made for two passengers for February 11. One of the passenger reservations was changed. The change was entered into the original booking database, acknowledged, and received as confirmed.

When the passenger with the changed reservation showed up for the flight, the airline stated they had no knowledge of his reservation, that the flight was overbooked, and they were changing the equipment for the flight to aircraft with less seat capacity.

EASTERN AIR LINES INCORPORATED 600 COMMERCE DRIVE OAK BROOK, ILLINOIS 60521 (312) 920-1800

EXHIBIT "A"

EASTERN

March 19, 1987

Mr. David E. Werner
Vice President
TRAVACO MANAGEMENT SYSTEMS, Inc.
34900 Chardon Road
Willoughby Hills, Ohio 44094

Dear Mr. Werner:

Apologies are in order when in fact a passenger such as Mr. Madden does not receive the fine service usually provided by Continental Airlines, and for this we are sorry.

We realize that an equipment change often plays havoc at the airport, especially when we are at capacity or beyond. It is an unhappy "fact of life" in the airline industry, that we must overbook our flights. The reasons for overbooking are well known to all of us in the industry.

Your reservation booking problems however are not Continental's. I hope you have received satisfactory reconciliation for the inconveniences caused by your reservation system.

As a token of our goodwill, and because of the value we place on our shared good clients, I have enclosed two First Class upgrades for your distribution.

Thank you for sharing this problem with us. The service level that you provide for your clients is to be commended.

Sincerely,

CONTINENTAL-EASTERN SALES, Inc.

Patricia E. Caviness

Patricia E. Caviness
Regional Administration Manager

PEC/jgf
enc.

cc: Mr. Tim Madden

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EXHIBIT "A"

TMS
TRAVACO MANAGEMENT SYSTEMS, INC.
34900 Chardon Rd., Willoughby Hills, Ohio 44094 / 216-942-4950

February 12, 1987

Mr. Tim Madden
Division Claims Manager
Progressive
3401 Enterprise Parkway
Beachwood, Ohio 44122

Dear Mr. Madden:

I am truly sorry for the inconveniences that you incurred on your trip from Cleveland to Ontario and return. I have thoroughly investigated the entire situation and can state that Travaco is not at fault.

On February 2, a reservation was made for Tina Fiocco and you from Cleveland to Ontario and return. On February 10, Tina called to change your return flight to February 11. At that time, we split the PNR (Passenger Name Record) from one reservation to two separate reservations. Tina's remained the same; and we changed your return flight to February 11. All these transactions were done through the United Airlines Apollo reservations system which is interfaced with the Continental Airlines database. The problem is as follows.

Our travel coordinators built one PNR for Tina and you since you were flying the same flights. At the time of the change, we split the PNR, meaning that we divided your joint reservation into two separate reservations. Tina remained the same, and we made the changes that you had requested. The airlines did reconfirm your new reservations. Therefore, the fault is twofold.

1. The airline reservations interface between United Airlines and Continental Airlines malfunctioned and did not confirm your reservation on the Continental Airlines system. This falls under the direct responsibility of United Airlines, because we pay for the utilization of their reservations system and expect an accurate database.

2. In the meantime, Continental Airlines changed their equipment, and their flight was already overbooked. Therefore, their airport personnel did not try to rectify the problem or evaluate priorities in a correct form.

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Travaco Management Systems has a unique quality control department which is a check and balance system to keep problems at a minimum. Your situation does not stand alone due to the problems of the airlines merging and the airlines reservations systems consolidating. The databases are not maintained on scheduling, fares, and fare rules, which is a great disservice to the travel agencies who book the majority of the domestic flights and a greater disservice to our corporate clients who are not getting the service they expect and for which they pay. Since the airlines are now deregulated, the priorities and methodologies of handling mistakes, overbookings, and communication failures, etc. are left to the airline's own discretion, which I feel is very poor.

Attached are copies of your reservations and the histories of the transactions which I have highlighted and tried to explain where the communications system failed. Also, I have attached copies of letters that I am sending to the airlines to which I expect an immediate response.

I personally would like to meet with you to further discuss this situation and reestablish our credibility.

Yours sincerely,

Dave

David E. Werner
Vice President

DEW:mra
cc: Tina Fiocco
Terry Fuller
Bruce Marlowe
Phil Leduc - United Airlines
Chris Peters - Continental Airlines

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TMS
TRAVACO MANAGEMENT SYSTEMS, INC.
34900 Chardon Rd., Willoughby Hills, Ohio 44094 / 216-942-4950

February 12, 1987

Mr. Chris Peters
Continental Airlines
24600 Center Ridge Road
King James III, Suite 100
Westlake, Ohio 44145

Dear Chris:

I am angry. The Progressive Company recently chose TMS as their Travel Management Systems Company, and I feel that due to a failure of communications between Continental Airlines and United Airlines my clients have been done a great disservice which has hurt my credibility. Attached are copies of the records, the histories, and a letter to Mr. Tim Madden. I expect an immediate response to rectify this situation so that the Progressive Company knows that they did not make a mistake in selecting TMS as its Travel Management Systems Company and to reinstate our credibility.

Yours sincerely,

David E. Werner
Vice President

DEW:mra
Attachments
cc: Tim Madden
Tina Fiocco
Terry Fuller
Bruce Marlowe
Phil Leduc

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TMS
TRAVACO MANAGEMENT SYSTEMS, INC.
34900 Chardon Rd., Willoughby Hills, Ohio 44094 / 216-942-4950

February 12, 1987

Mr. Phil Leduc
United Airlines District Sales Office
Regional Operations Center
Cleveland, Ohio 44135

Dear Phil:

I am angry. The Progressive Company recently chose TMS as their Travel Management Systems Company, and I feel that due to a failure of communications between United Airlines and Continental Airlines my clients have been done a great disservice which has hurt my credibility. Attached are copies of the records, the histories, and a letter to Mr. Tim Madden. I expect an immediate response to rectify this situation so that the Progressive Company knows that they did not make a mistake in selecting TMS as its Travel Management Systems Company and to reinstate our credibility.

Yours sincerely,

David E. Werner
Vice President

DEW:mra
Attachments
cc: Tim Madden
Tina Fiocco
Terry Fuller
Bruce Marlowe
Chris Peters

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```
RCVD-.IB/ZFW8019
CLE AG JB 2330Z/02FEB
AS OK/$BFS/9B AS OK/$BFS/9B
NS 1064.32/85.18/1150.00 - 2FEB V.V.V.V/V.V.V.V
AS 888.88/71.12/960.00 - 2FEB V.V.V.V/V.V.V.V
RCVD-.IB/ZFW8019 -CR- CLE/FW8/UA AG JB 02FEB2330Z
HS CO 243 V09FEB CLEDEN SS/HK2   355P  459P
HS CO 271 V09FEB DENONT SS/HK2   530P  639P
HS CO 568 V12FEB ONTDEN SS/HK2   305P  611P
HS CO 244 V12FEB DENCLE SS/HK2   655P 1138P
RCVD- -CR- CLE AG JB 02FEB2330Z
AS CAR ZZ 09FEB BK/BK1   ONT-12FEB SCAR/BS-3A883232**BUDGET FULL
 SIZE CAR/**/CF-
XT TAU/02FEB/WORK XS OK/$BFS/9B AS REPR/$BFS/9B
RCVD-JB/ZFW8019 -CR- CLE/FW8/UA AG JB 02FEB2356Z
AG REP/44 CLEOU 775811
RCVD-/ZFW8030 -CR- CLE/FW8/UA AG JP 03FEB1308Z
XS REPR/$BFS/9B AS OK/$BFS/9B
XS RRR.88/71.12/960.00 - 2FEB V.V.V.V/V.V.V.V
AS  V/888.88/71.12/960.00 - 3FEB V.V.V.V/V.V.V.V
RCVD-JB/ZFW8019 -CR- CLE/FW8/UA AG JB 03FEB1402Z
AG REP/40 CLEOU 775810
RCVD-.IB/ZFW8019 -CR- CLE/FW8/UA AG JB 03FEB1425Z
AG REP/54 CLEOU 775813
RCVD-W/ZFW8055 -CR- CLE/FW8/UA AG WD 03FEB1443Z
XS OK/$BFS/9B AS OK/$BFS/9B
XS 888.88/71.12/960.00 - 3FEB V.V.V.V/V.V.V.V
AS  V/888.88/71.12/960.00 - 4FEB V.V.V.V/V.V.V.V
RCVD-JB/ZFW8019 -CR- CLE/FW8/UA AG JB 04FEB1509Z
XT TAU/03FEB/.FINISH XS OK/$BFS/9B AS OK/$BFS/9B
XS 888.88/71.12/960.00 - 4FEB V.V.V.V/V.V.V.V
AS 888.88/71.12/960.00 - 4FEB V.V.V.V/V.V.V.V AT HB:9B
RCVD-/ZFW8019 -CR- CLE/FW8/UA AG JB 04FEB1509Z
XS OK/$BFS/9B AS REPR/$BFS/9B
RCVD-TINA/ZFW8019 -CR- CLE/FW8/UA AG JB 10FEB2145Z
XS CO 568 V12FEB ONTDEN SS/HK1   305P  611P
XS CO 244 V12FEB DENCLE SS/HK1   655P 1138P
AS CO 568 V11FEB ONTDEN NN/SS1   305P  611P
AS CO 244 V11FEB DENCLE NN/SS1   655P 1138P
XS REPR/$BFS/9B AS REPR/$BFS/9B
RCVD-JB/ZFW8019 -CR- CLE/FW8/UA AG JB 10FEB2146Z
SC CO 568 V11FEB ONTDEN HK/XK1   305P  611P
SC CO 244 V11FEB DENCLE HK/XK1   655P 1138P
AS UA 721 H11FEB ONTLAX NN/SS1   645P  712P
AS UA  44 H11FEB LAXCLE NN/SS1  1100P  602A
XS REPR/$BFS/9B AS REPR/$BFS/9B
RCVD-W/ZFW8055 -CR- CLE/FW8/UA AG WD 11FEB2301Z
XT T/CLE 04FEB1509Z JB AG * AT HF372839299452004
RCVD- -CR- ONT/FW8/UA CS 00 11FEB2318Z
 1 CO 243V 09FEB CLEDEN HK1   355P  459P
 2 CO 271V 09FEB DENONT HK1   530P  639P
 3   CAR ZZ 09FEB BK1  ONT-12FEB SCAR/BS-36883232**BUDGET FULL S
IZE CAR/**/CF-
```

HISTORY FOR MADDEN & FIOCCO

SPLIT RECORD CHANGED RETURN DATE

SOLD

CONFIRMED

DID NOT CANCEL, JUST TAKES OFF SCREEN TO SHOW UA RETURN

PASSENGER CALLED - CONTINENTAL HAD NO RECORD. BOOKED UA - ONT TO CLE (EARLIEST FLIGHT AVAILABLE)

ORIGINAL OUTBOUND

NN = NEED STATUS

SS = SELL STATUS

HK = HOLD CONFIRMED

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MADDEN PASSENGER RECORD

```
24330W/JB CLEOU FW8019  AG 36883232 02FEB
 1.1MADDEN/TIM*C710P 0202 A1 C5 H4
 4 UA 721H 11FEB ONTLAX HK1   645P  712P           WE
ONT/2058CT/IN    624P  .01L         *OUT*  A57P  .01E
LAX/2112CT/IN    711P  .01E OT
 5 UA  44H 11FEB LAXCLE HK1  1100P  602A*          WE
LAX/0128CT/IN   1014P  .04L         *OUT* 1127P  .02E
CLE/0609CT/IN    623A  .21L         *OUT*  708A  .14L EQPT
*** SEAT DATA EXISTS ***
FONE-CLEAS/216 942-4950 TRAVACO-JUDY
CLEB/216 464-7900X5004-TERRY FULLER
DLVR-DR-DELIVER THURSDAY
ADRS-PROGRESSIVE INSURANCE¤COMMERCIAL DIVISION¤3401 ENTERPRISE P
KWY¤BEACHWOOD OH Z/44122
TKTG-T/ONT 11FEB23187 00 CS/0162413 07A869
ATFQ-REPR/$BFS/9B
FQ-888.88/71.12/960.00 - 4FEB V.V.V.V/V.V.V.V
RMKS-FOP-CC MOST TKTS**WILL BE SOME DIRECT BILLINGS**
   2 ALL FOR OK DIRECT BILL-PAM ILACQUA OR TERRY FULLER
   3 **ACCOUNT 250 IS PROGRESSIVE CAUSUALTY**
   4 **SEE PROFILES FOR INDIVIDUAL CREDIT CARDS**
   5 ***COST CENTER NRR IN NAME FIELD RMKS**
   6 DOLLAR 33-8002-06600 NATIONAL 5300292
   7 BUDGET 441019940 PRESENT PHH MEMBERSHIP CARD
   8 ***CAT TEAM: TVL IS ASAP/QUICKEST/PRICE NOT URGENT**
   9 **THESE PEOPLE ARE VIPS**PTAS OKAY***
  10 **OK TO DIRECT BILL-TONY CIALELLA**
TRMK-SD ACCT-01¤254¤19¤10
   2 CANNED RM-11¤12¤13¤14¤15
   3 RMKS-ATTN: TINA EXT: 5104
   4 RMKS-ENTERPRISE LOCATION
   5 /C09FEB-4-DOOR ON REQUEST ONLY
   6 /C09FEB-CAR IN MR MADDENS NAME
   7 /C09FEB-$36 CORP RATE
   8 /C09FEB-CF-0330215/PRE PHH MEMB CARD
   9 CANNED RM-1¤8
  10 ITIN RMK-HOTEL NOT REQUESTED
  11 ITIN RMK-$600 IS NORMAL COACH FARE
  12 ITIN RMK-$480 IS LOWEST NON RESTRICTED FARE
  13 ITIN RMK-RES MADE BY JUDY AT TRAVACO 02/02/87 630P
  14 ITIN RMK-PTY OF 2-FIOCCO/MADDEN
  15 /C09FEB-CORP ID 441019940
  16 ITIN RMK-OC:550203879434
  17 CC NO-CAX¤372839299452004¤05/87
  18 ITIN RMK-CARDHOLDER: TIMOTHY MADDEN
  19 ITIN RMK-TINA OKAYED TIMS AMREX CARD FOR EACH
  20 ITIN RMK-OF THEM/ALSO OKAYED SEATING FOR AISLE
  21 ITIN RMK-AND MIDDLE SEAT
  22 DEL RMK-DELIVER THURSDAY
** CURRENT SEAT DATA **
UA 0721 H 11FEB ONT LAX
 01. MADDEN    T  HK  05D  NA
UA 0044 H 11FEB LAX CLE
 01. MADDEN    T  HK  23C  NA
```

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FIOCCO PASSENGER RECORD

```
05V&AV/JB CLEOU 7FW8019 AG 3AR83232 10FEB
 1.1FIOCCO/TINA*C701P 0202 A1 C4 H4
 3 CO 568V 12FEB ONTDEN HK1   305P  611P            TH
 4 CO 244V 12FEB DENCLE HK1   655P 1138P            TH
*** SEAT DATA EXISTS ***
FONE-CLEAS/216 942-4950 TRAVACO-JUDY
CLEB/216 464-7900X5004-TERRY FULLER
DLVR-DR-DELIVER THURSDAY
ADRS-PROGRESSIVE INSURANCE¤COMMERCIAL DIVISION¤3401 ENTERPRISE P
KWY¤BEACHWOOD OH Z/44122
TKTG-T/CLE 04FEB1509Z JB AG *
ATFQ-REPR/$RFS/9B
FQ-888.88/71.12/960.00 - 4FEB V.V.V.V/V.V.V.V
RMKS-FOP-CC MOST TKTS**WILL BE SOME DIRECT BILLINGS**
   2 ALL FOR OK DIRECT BILL-PAM ILACQUA OR TERRY FULLER
   3 **ACCOUNT 250 IS PROGRESSIVE CAUSUALTY**
   4 **SEE PROFILES FOR INDIVIDUAL CREDIT CARDS**
   5 ***COST CENTER NBR IN NAME FIELD RMKS**
   6 DOLLAR 33-8002-06600 NATIONAL 5300292
   7 BUDGET 441019940 PRESENT PHH MEMBERSHIP CARD
   8 ***CAT TEAM: TVL IS ASAP/QUICKEST/PRICE NOT URGENT**
   9 **THESE PEOPLE ARE VIPS**PTAS OKAY***
  10 **OK TO DIRECT BILL-TONY CIALELLA**
  11 SPLIT PTY/10FEB/JRAG/CLE/24330W
TRMK-SD ACCT-01¤254¤19¤10
   2 CANNED RM-11¤12¤13¤14¤15
   3 RMKS-ATTN: TINA EXT: 5104
   4 RMKS-ENTERPRISE LOCATION
   5 /C09FEB-4-DOOR ON REQUEST ONLY
   6 /C09FEB-CAR IN MR MADDENS NAME
   7 /C09FEB-$36 CORP RATE
   8 /C09FEB-CF-0330215/PRE PHH MEMB CARD
   9 CANNED RM-10R
  10 ITIN RMK-HOTEL NOT REQUESTED
  11 ITIN RMK-$600 IS NORMAL COACH FARE
  12 ITIN RMK-$480 IS LOWEST NON RESTRICTED FARE
  13 ITIN RMK-RES MADE BY JUDY AT TRAVACO 02/02/87 630P
  14 ITIN RMK-PTY OF 2-FIOCCO/MADDEN
  15 /C09FEB-CORP ID 441019940
  16 ITIN RMK-9C:550203R7943A
  17 CC NO-CAX¤372839299452004¤05/87
  18 ITIN RMK-CARDHOLDER: TIMOTHY MADDEN
  19 ITIN RMK-TINA OKAYED TIMS AMREX CARD FOR EACH
  20 ITIN RMK-OF THEM/ALSO OKAYED SEATING FOR AISLE
  21 ITIN RMK-AND MIDDLE SEAT
  22 DEL RMK-DELIVER THURSDAY
** CURRENT SEAT DATA **
CO 0568 V 12FEB ONT DEN
 01. FIOCCO    T  CK  09D  N     *ADVANCE CHECK IN*
CO 0244 V 12FEB DEN CLE
 01. FIOCCO    T  CK  14D  N     *ADVANCE CHECK IN*
```

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HISTORY OF TRANSACTIONS

```
RCVD-JB/ZFWR019
CLE AG JB 2145Z/10FEB
X$ OK/$BFS/9B A$ REPR/$BFS/9B
RCVD-JB/ZFW8019 -CR- CLE/FW8/HA AG JB 10FEB2145Z
 1 CO 243V 09FEB CLEDEN HK1   355P  459P
 2 CO 271V 09FEB DENONT HK1   530P  639P          (Outbound flight)
```

History is same as Mr. Madden's, up to February 10, when record was split.

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EXHIBIT B

NOTICE–OVERBOOKING OF FLIGHTS

Airlines flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions, persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations. *Some airlines do not apply these consumer protections to travel from some foreign countries, although other consumer protections may be available. Check with your airline or your travel agent.*

NOTICE TO PASSENGERS

Reservations of passengers presenting themselves at Midway Airlines Boarding Gate less than 10 minutes before scheduled departure of domestic flights (30 minutes for flights to the U.S. Virgin Islands), will be subject to cancellation.

Passengers traveling from the U.S. Virgin Islands must check-in for their flight one hour and 30 minutes before scheduled departure time for customs and immigration clearance.

Advance seat selection is subject to cancellation if the passengers are unable to present themselves 15 minutes prior to scheduled departure.

Every passenger who meets the airline's check-in requirements has a right to a seat in a non-smoking section.

We cannot check baggage that does not have the passenger's name on the outside, and it is suggested that identification be placed inside the bag as well. Free labels are available at Midway Airlines ticket counters.

BAGGAGE LIABILITY LIMIT

1. Lock your baggage. 2. Our liability for loss, damage or theft is limited. Ask our agent for details. Therefore: (a) If your baggage and its contents exceed the liability limit, you may purchase extra coverage; (b) Do not put valuables, medication or prescriptions in baggage to be checked; (c) Do not put fragile articles in your baggage; if you do, it will be checked only at your own risk, and Midway disclaims any liability for such items. 3. All baggage claims must be made in person within four hours of passenger's arrival. 4. When claiming baggage, compare the number on your claim check with the number on the strap check on your baggage. For additional information ask our agent for a summary of incorporated terms.

RESTRICTED ARTICLES

Acid, lighter fluid, matches and other items classified by the Federal government as hazardous materials—i.e., explosives, flammable solids and liquids, oxidizing materials, corrosive materials, compressed gases, poisons, etiologic agents, radioactive materials and irritating materials cannot be carried in checked baggage.

Federal regulations require that firearms in checked baggage must be declared.

For reservations call:
In Chicago (312) 767-3400 Toll Free 1-800-621-5700

6-86

Midway Airlines

GATE	DATE	FLT	SEAT

GATE	DATE	FLT	SEAT

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IMPORTANT INFORMATION

PLEASE CHECK IN EARLY — Reservations of passengers who fail to check in or present themselves at the boarding gate at least 15 minutes prior to scheduled departure of a domestic flight or at the airport check-in counter no later than thirty minutes before the scheduled departure of an international flight (exception: forty-five minutes for trans-Atlantic flights) will be subject to cancellation and denied boarding compensation will not be applicable.

Passengers with advance boarding passes must present themselves at the boarding gate at least 15 minutes prior to scheduled departure of a domestic flight or at the airport check-in counter no later than 30 minutes before scheduled departure of an international flight (exception: 45 minutes for transatlantic flights), otherwise their seats are subject to reassignment to other passengers.

Passengers with pre-assigned seats who do not have boarding passes must present themselves at the boarding gate at least 30 minutes before the scheduled departure of a domestic flight or at the airport check-in counter no later than 30 minutes before the scheduled departure of an international flight (exception: 45 minutes for transatlantic flights), otherwise their seats are subject to reassignment to other passengers.

BAGGAGE TIPS — For your convenience:

- Outside identification is required on all checked baggage. Delta also recommends inside identification as a precaution against the loss of outside identification.
- Always carry medicine, money, valuable documents, keys, jewelry, cameras and other small fragile items, etc., in your hand luggage.
- Always lock your luggage.
- Carry-on items are restricted to those which can be stowed under a passenger seat or in an approved overhead compartment.

FIREARMS AS CHECKED BAGGAGE — Federal Regulations require that firearms in checked baggage must be declared when baggage is presented for checking.

BAGGAGE ALLOWANCE — Delta Air Lines, Inc., will carry free of charge, on flights solely within the continental United States, and Canada or Puerto Rico, first checked bags not to exceed 62" (158 cm) and 55" (139 cm) respectively in overall length, width and height, plus one or more additional bags which, measured together if more than one piece, does not exceed 45" (115 cm) in overall dimensions which may either be checked or retained in the passenger's custody provided it can be stowed under the passenger's seat or in an approved overhead compartment. Maximum weight per piece — 70 pounds (31.8 kg).

Baggage in excess of the free allowance or articles which exceed size or weight limitations, or which in any way do not qualify as free baggage will be accepted only at published tariff rates.

NOTE: Domestic and U.S.A. — Puerto Rico: Delta does not assume liability for jewelry, cash, camera equipment or other similar valuable items contained in checked or unchecked baggage, unless a declaration of excess value has been declared and applicable charges paid.

EXCESS VALUATION — Baggage liability is limited to those amounts set forth in the Conditions of Contract contained in Delta's ticket unless an additional charge is paid. For coverage on any Delta flight, contact any Delta ticket office for information on the maximum value that can be declared and for specific charges.

NOTE: FOR SECURITY REASONS, ALL UNCHECKED ARTICLES CARRIED IN THE CABIN ARE SUBJECT TO SEARCH.

"The Delta Connection" Commuters — All Delta Flights 2000-2999

Printed in U.S.A.

0412-71011 Rev. 7-88

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EASTERN

Arranged by a Professional Travel Agent For:

GENERAL PASSENGER INFORMATION

BAGGAGE CHECKING TIPS In order to serve you better.

- PLEASE INCLUDE YOUR NAME, ADDRESS AND TELEPHONE NUMBER ON BOTH THE INSIDE AND OUTSIDE OF YOUR BAGGAGE.
- DON'T PLACE JEWELRY, MONEY, MEDICINE, DOCUMENTS OR FRAGILE ITEMS SUCH AS CAMERAS OR ELECTRONIC EQUIPMENT IN CHECKED BAGGAGE.

BAGGAGE: Eastern will carry free, three (3) bags having linear dimensions no greater than 62", 55" and 45". The 45 inch bag (length plus width plus height) may be carried aboard the aircraft provided that the height does not exceed 7 inches. No bag can exceed 70 lbs. Exception: For international travel and to/from the U.S. and Canada excluding Bermuda, the Bahamas, Puerto Rico and the Virgin Islands, the 3rd piece of baggage (not to exceed 45" and 7½" in height) must be carried on. For more information on baggage restrictions and excess baggage charges to and from Latin America and the Caribbean please contact your travel agent or Eastern.

RECOMMENDED AIRPORT CHECK-IN TIME BEFORE SCHEDULED DEPARTURES:

For U.S. Domestic Flights: — At least 40 minutes.

For International Flights:

— At least 40 minutes between the U.S. and Canada, Puerto Rico and Virgin Islands, and from the U.S. to the Bahamas or Bermuda

— At least 60 minutes between the U.S. and Mexico and points in the Caribbean and from the U.S. to Latin America, and from the Bahamas or Bermuda to the U.S.

— At least 90 minutes from Latin American to the U.S. and between points in Latin America.

Cancellation of Reservations:

Eastern reserves the right to cancel the reservations of any passenger who fails to present himself at the airport gate at least:

- 10 minutes prior to the scheduled departure time for any flight departing in or from the U.S. (including Puerto Rico and the U.S. Virgin Islands.)
- 30 minutes prior to the scheduled departure time for any flight departing from an international point outside the U.S.

Such cancelation will cause any passenger to be ineligible for denied boarding compensation.

Reconfirmation of Reservations:

Reconfirmation of reservations on an EASTERN Airlines flight(s) is not required. For reconfirmation requirements on another airline's flight(s), consult those airlines directly.

NOTICE — OVERBOOKING OF FLIGHTS

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers, the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions, persons denied boarding involuntarily are entitled to compensation. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding loca-

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[redacted]

American Airlines

Authorized Travel Agent

[redacted]

Ticket for:

[redacted]

PASSENGER INFORMATION: 1. Lock your baggage. 2. Checked baggage must have the passenger's name on the outside. 3. Our liability for loss, damage or delays is limited to $1,250 per ticket paying passenger domestically and approximately $634.90 per piece of checked baggage for international travel. These limits will apply unless an excess valuation is declared at the time of check-in. 4. American is not responsible for jewelry, cash, camera equipment or other similar valuable items contained in checked or unchecked baggage. These items, as well as medications or prescriptions, should be carried personally by you. 5. Fragile or perishable articles will be checked only at your own risk. 6. Passengers ticketed for travel on specific flights are not subject to subsequent fare increases unless they: (a) change their originating flight or (b) change any other flight to a routing where the original fare did not apply. 7. American Airlines provides smoking and non-smoking seating areas on all flights. Unfortunately, we may not be able to honor all passenger requests if check-in requirements indicated below have not been met.

RESTRICTED ARTICLES: Acid, lighter fluid, matches and other items classified by the Federal government as hazardous materials—i.e., explosives, flammable solids and liquids, oxidizing materials, corrosive materials, compressed gases, poisons, etiologic agents, radioactive materials and irritating materials cannot be carried in checked baggage. Federal regulations require that firearms in checked baggage must be declared. Firearms must be presented in a hard case or a crushproof type container manufactured specifically for shipment.

NOTICE – OVERBOOKING OF FLIGHTS

Airline flights may be overbooked, and there is a slight chance that a seat will not be available on a flight for which a person has a confirmed reservation. If the flight is overbooked, no one will be denied a seat until airline personnel first ask for volunteers willing to give up their reservation in exchange for a payment of the airline's choosing. If there are not enough volunteers the airline will deny boarding to other persons in accordance with its particular boarding priority. With few exceptions persons denied boarding involuntarily are entitled to compensation. However, to receive compensation, a passenger must present himself at the loading gate for boarding at least five minutes before scheduled departure. The complete rules for the payment of compensation and each airline's boarding priorities are available at all airport ticket counters and boarding locations.

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EXHIBIT "C"

3/23/87 AIR FARE - MILEAGE COMPARISONS

CITY	CITY	MILES	FARES
Cleveland	Cincinnati	221	$290.
Cincinnati	Atlanta	373	$440.
Laguardia	Atlanta	761	$278.
Denver	Atlanta	1208	$640
Cleveland	Denver	1213	$340.

SUPER SALE

Make your reservations at least two days in advance.

From Cleveland:

Albuquerque	$ 79
Amarillo	$ 79
Asheville, NC	$ 59
Atlanta	$ 59
Austin	$ 79
Bakersfield	$ 99
Baton Rouge	$ 79
Beaumont/Port Arthur	$ 79
Birmingham	$ 59
Bryan/College Station	$ 79
Buffalo	$ 29
Burbank	$ 99
Chattanooga	$ 59
Chicago	$ 69
Colorado Springs	$ 79
Columbus, OH	$ 29
Columbus/Starkville/ West Point, MS	$ 59
Corpus Christi	$ 79
Dallas/Fort Worth	$ 89
Denver	$ 79
Des Moines	$ 59
El Paso	$ 99
Eugene	$ 99
Evansville, IN	$ 59
Fayetteville, AR	$ 79
Ft. Smith, AR	$ 79
Ft. Wayne	$ 29
Grand Rapids	$ 19
Greenville/Spartanburg	$ 59
Harlingen	$ 79
Houston	$ 79
Huntsville	$ 59
Indianapolis	$ 29
Jackson, MS	$ 59
Kansas City, MO	$ 59
Killeen/Ft. Hood	$ 79
Knoxville	$ 59
Lafayette, LA	$ 79
Lake Charles, LA	$ 79
Las Vegas	$ 99
Lawton/Ft. Sill	$ 79
Little Rock	$ 59
Long Beach	$ 99
Longview/Kilgore	$ 79
Los Angeles	$ 99
Lubbock	$ 79
Memphis	$ 59
Merced, CA	$ 99
Meridian, MS	$ 59
Midland/Odessa	$ 79
Milwaukee	$ 29
Minneapolis/St. Paul	$ 59
Mobile	$ 59
Monroe, LA	$ 79
Montgomery, AL	$ 59
Nashville	$ 59
New Orleans	$ 79
Oakland	$ 99
Oklahoma City	$ 79
Omaha	$ 59
Ontario, CA	$ 99
Orange County	$ 99
Orlando	$ 79
Palm Springs	$ 99
Phoenix/Scottsdale	$ 99
Portland, OR	$ 99
Reno/Tahoe	$ 99
Sacramento	$ 99
St. Louis	$ 59
Salt Lake City	$ 99
San Angelo, TX	$ 79
San Antonio	$ 79
San Diego	$ 99
San Francisco	$ 79
San Jose	$ 99
Santa Barbara	$ 99
Seattle/Tacoma	$ 99
Shreveport	$ 79
Tampa/St. Petersburg	$ 79
Texarkana, AR	$ 79
Tri-City Airport, TN	$ 59
Tucson	$ 59
Tulsa	$ 79
Tupelo, MS	$ 59
Tuscaloosa	$ 59
Tyler, TX	$ 79
Visalia, CA	$ 99
Waco	$ 89
Wichita	$ 79
Wichita Falls	$ 89
Yuma, AZ	$ 99

Stay over Saturday night. Tickets are nonrefundable.

Fares are round trip based on nonstop travel from your home. Tickets must be purchased within 24 hours after making reservations but at least two days before travel. Saturday night stay required. Fares must be completed by 5/20/87. Tickets are nonrefundable. Fares are slightly higher on Friday, Sunday, selected peak travel days and certain nonstop flights. Fares are subject to change without notice and other restrictions may apply. Seats are limited. All or a portion of trip may be on an American Eagle carrier. Fares may apply from Las Vegas, Boston and Florida. For more information and details, call your Travel Agent or American Airlines Vacations at 1-800-433-7300.

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EXHIBIT "E"

The attached schedules were obtained through the United Airlines Apollo database and the TWA PARS database. Both databases were accessed on March 24th at 10:01 A.M. The United database displayed that TWA Flight #443 had no seats available at "K" fare, and the TWA database showed one seat available in "K" fare.

"EXHIBIT E"

```
TU 24MAR  E P
1*7TW 551 F4 Y4 B4 Q4 M4 K4 V0     CLESTL  710A  742A D9S B-S-  0
2* TW 443 F4 C4 Y4 R4 Q4 M4 K0 V0     LAX  845A 1038A L10 B-B-  0
3* TW 691 F4 Y4 B4 Q4 M4 K0 V0     CLESTL  940A 1012A D9S ----  0
4* TW  91 F4 C4 Y4 B4 Q4 M4 K0 V0     LAX 1130A  120P L10 L-L-  0
5*7TW 551 F4 Y4 B4 Q4 M4 K4 V0     CLESTL  710A  742A D9S B-S-  0
6* TW  91 F4 C4 Y4 R4 Q4 M4 K0 V0     LAX 1130A  120P L10 L-L-  0
7* TW 511 F4 Y4 B4 Q4 M4 K4 V0     CLESTL  110P  142P D9S L-S-  0
8* TW 129 F4 C4 Y4 B4 Q4 M4 K4 V0     LAX  240P  434P L10 D-D-  0
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UNITED AIRLINES DATA BASE

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"EXHIBIT E"

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24MAR-TU-1001A STL LAX    CT PT
SEE ALTERNATE    BUR ONT
1 TW 443  F9 C9 Y9 Q9 B9 M9 STLLAX  845A 1038A   L10 RRR 0A
                V0 K1
2 TW  91  F9 C9 Y9 Q9 B9 M9 STLLAX 1130A  120P   L10 LLL 0A
                V0 K0
3 TW  79  F0 C0 Y0 Q0 B0 M0 STLLAX 1130A  120P   L10 LLL 0A
                V0 K0
4 TW 129  F9 C9 Y9 Q9 B9 M9 STLLAX  240P  434P   L10 DDD 0A
                V0 K9
]
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TWA DATA BASE

EXHIBIT "F"

The attached schedules were obtained through the United Airlines Apollo database and the TWA PARS database. Both databases were accessed on March 24th at 9:52 A.M. The United database displayed that United Flight #3814 had no seats available at "V" fare, and the TWA database showed four seats available in "V" fare.

In addition, United Flight #3860, on the United database showed one seat in "V" fare, while the TWA database showed United Flight #3860 as having four seats available in "V" fare.

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28MAR-SA-952A ASE DEN   MT MT
1 UA3860  Y4 H4 Q0 M4 V4  ASEDEN  945A 1025A   CVR      0
  UA3860 ASPEN AIRWAYS
2 UA3820  Y0 H0 Q4 M0 V4 ASEDEN 1005A 1040A   146      0
  UA3820 ASPEN AIRWAYS
3 UA3814  Y4 H4 Q0 M4 V4  ASEDEN  930A 1005A   146      0
  UA3814 ASPEN AIRWAYS
4 C02113  Y4 Q4 M0 V4    ASEDEN 1020A 1100A   DH7      0
  C02113 ROCKY MOUNTAIN
]
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EXHIBIT "F"

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SA 28MAR  M M
1 XC02147 Y7 Q0 M0 V7                ASEDEN  840A  920A DH7 ---- *0
2 XUA3650 Y0 R0 M0 H0 Q0             ASEDEN  900A  940A CVR ---- *0
3 XUA3816 Y1 M1 H1 Q0 V0             ASEDEN  910A  945A 146 ---- *0
4  C02105 Y0 Q0 M0 V0                ASEDEN  920A 1000A DH7 ---- *0
5 XUA3814 Y9 M9 H9 Q0 V0             ASEDEN  930A 1005A 146 ---- *0
6 XUA3860 Y7 M7 H7 Q5 V1             ASEDEN  945A 1025A CVR ---- *0
7  UA3820 Y3 M3 H3 Q0 V0             ASEDEN 1005A 1040A 146 ---- *0
8  C02113 Y7 Q7 M0 V7                ASEDEN 1020A 1100A DH7 ---- *0
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EXHIBIT "F"

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Senator METZENBAUM. Thank you, Mr. Dettelbach.

Mr. Beauvais.

Mr. BEAUVAIS. Thank you, Senator.

America West Airlines started service about 3½ years ago. We now have 49 Boeing 737 aircraft. We are based——

Senator METZENBAUM. Forty-nine what?

Mr. BEAUVAIS. Forty-nine Boeing 737 aircraft. We are based in Phoenix. We have 5,000 employees and we will carry ten million passengers in 1987.

While the regulatory structure developed by Congress was and is quite sound and its intent as to how the structure was to be managed was quite clear, and although I believe deregulation has, at least until recently, been quite successful, there are, however, several storm clouds on the horizon that must be addressed.

First and foremost, the anti-competitive effects of the computer reservation systems must be addressed as soon as possible. The major CRS systems are at the root of the unreasonable industry concentration, excessive market domination and monopoly power that we face today, and will lead to conditions that will allow these large carriers to increase prices, reduce services, and diminish competition.

Second, with increased consolidation and concentration that has recently occurred, the problems of airport access have increased substantially, thus seriously compromising the ability of the smaller airlines to enter new markets.

Finally, the existing air traffic control system has, quite simply, not kept pace with the demands placed upon it by deregulation.

While these problems are capable of solution through intelligent DOT intervention to assure that the marketplace can function effectively, the incredible concentration and consolidation that DOT has permitted to occur has greatly exacerbated the impact of these problems on the air transportation system and may well threaten its long-term viability.

In the two years since DOT assumed responsibility for mergers, there have been a total of 13 mergers or acquisitions of certificated carriers presented to the Department either for approval or exemption from the need for approval, and in every instance the transaction was permitted to go forward.

What we are left with is mega-carriers, such as Texas Air, United, American, Delta, Northwest, and a possible combination of U.S. Air-Piedmont, which account for 82 percent of the total system revenue passenger miles in the United States.

In 1986, the top six carriers had only 62 percent.

My assumption from all the appearances is that Pan Am and TWA will be purchased by one of the mega-carriers, thus further increasing the mega-carrier market dominance to 95 percent.

To make matters worse, competitively the five largest carrier groups own the five computer reservation systems that are in the marketplace and already control over 86 percent of the market.

In short, the DOT, by considering these cases in a vacuum and with no long-term notion as to how the industry might ultimately look, has left us with an incredibly concentrated and oligopolistic industry.

While I hope it is not too late to address the situation, it is clear that several steps must be taken. First, while the transfer of the Department's Section 408 and 409 authority to Justice has a certain appeal, I have several concerns.

Initially, the current Justice Department does not have the reputation of vigorously challenging mergers and acquisitions in other industries. Moreover, not only has Justice acquiesced in many of the airline mergers, but it has never taken any of the DOT decisions to court.

Furthermore, Justice is not equipped to conduct on-the-record hearings. Finally, I question whether the Justice Department, as opposed to the Transportation Department, is the proper agency to be making those decisions, although it would be most useful for the Justice Department to play a greater role in DOT proceedings.

Second, on the assumption that Section 408 authority is to remain at DOT, Congress must make it clear to the Department that its implementation of the merger/acquisition provisions over the past two years has not been consistent with the intent of Congress.

Third, given the excessive concentration that DOT has permitted, going from an unconcentrated to a clearly oligopolistic industry in less than two years, the DOT analysis in future merger/acquisition cases must go beyond mere competitive impacts and consider the important public interest and national transportation policy concerns that will be raised by any future acquisition.

Fourth, the only manner in which these now critically important competitive, public interest, and national transportation policy judgments should be made in the future is by means of an on-the-record hearing in which the Department has the benefit of thoughtful consideration given by an administrative law judge to all of these issues on a full record and the opportunity for review of that decision at the highest levels of the Department.

Fifth——

Senator METZENBAUM. Mr. Beauvais, can you wind up, please?

Mr. BEAUVAIS. Well, that concludes basically what I have. Included in my testimony are also some recommendations to deal with the environment that we are in; namely, hostile takeovers.

So thank you very much.

Senator METZENBAUM. Your entire statement will be included in the record, as will the statements of the others who testify this morning.

[The prepared statement follows:]

TESTIMONY OF

EDWARD R. BEAUVAIS

CHAIRMAN OF THE BOARD

AND CHIEF EXECUTIVE OFFICER

AMERICA WEST AIRLINES, INC.

BEFORE THE

ANTITRUST SUBCOMMITTEE OF THE

JUDICIARY COMMITTEE

UNITED STATE SENATE

MARCH 25, 1987

Mr. Chairman and Members of the Subcommittee, I am Edward R. Beauvais, Chairman of the Board and Chief Executive Officer of America West Airlines, Inc., a new entrant airline that began operations a little over 3-1/2 years ago. We appreciate the opportunity to appear before you today to discuss airline deregulation and mergers.

By way of background, America West began operations as a new entrant airline in August 1983 with three Boeing 737-200 aircraft operating to and from our Phoenix hub and the cities of Los Angeles, Kansas City, Colorado Springs and Wichita. Since that time, we have grown dramatically, now serving a total of 37 cities in the Midwest, Southwest, Northwest, Canada and California from our Phoenix and newly established Las Vegas hubs, operating a total of 49 Boeing 737 and three de Havilland Dash 8 aircraft. We will be taking delivery of six Boeing 757 aircraft in May and June of this year and will begin new service to Chicago's O'Hare Airport at that time, with service to New York and Washington being initiated on July 1. We now have a total of over 5,000 employees, almost all of whom own stock in our company and participate in our employee profit-sharing plan. As you can see, we have come a very long way in a relatively short time, and intend to continue to expand our operations over the next several years -- which brings me, of course, to the subject of today's hearings, airline mergers and deregulation.

THE DEREGULATION ACT AND AIRLINE MERGERS

As all of you know, the Airline Deregulation Act made several significant changes in the manner in which air transportation was to be regulated in the United States. Among the most important of those changes was the revision of the Federal Aviation Act's so called "public interest/public convenience and necessity" test -- the touchstone for all regulation under the Act -- so as to place increased reliance on competition to establish the nation's air transportation system. More specifically, the Congress required the Civil Aeronautics Board initially and now the Transportation Department in the exercise of its regulatory functions --

-- to prevent unfair, deceptive, predatory, or anticompetitive practices in air transportation;

-- to avoid unreasonable industry concentration, excessive market domination, and monopoly power and other conditions that would tend to allow one or more air carriers to unreasonably increase prices, reduce services, or exclude competition in air transportation;

-- to provide for the availability of a variety of adequate, economic, efficient, and low-priced services by air carriers; and

-- to encourage entry into air transportation markets by new air carriers, entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

This pro-competitive theme was also carried over by the Congress into Section 408 of the Act, which provides the framework for present D.O.T. consideration of mergers and acquisitions. Under that provision, it is unlawful, without prior approval, for any air carrier to acquire control of another air carrier in any manner whatsoever, and the statute contains a rebuttable presumption that ownership of 10% or more of the voting securities or capital of an air carrier constitutes control. And, the Act establishes two standards for the required approval of such a transaction -- an antitrust standard and a public interest standard.

Turning initially to the antitrust standard, the inescapable intent of Congress in rewriting the

statute was to give antitrust considerations top priority in Transportation Department consideration of airline merger cases. Since the passage of the Deregulation Act, not only transactions which would result in fully achievable monopolies but also those which are in furtherance of a combination or conspiracy to monopolize or to attempt to monopolize are absolutely barred. And, under the new test, a merger which would violate Section 7 of the Clayton Act (i.e., lessen competition substantially in any region of the United States) may not be approved by the Department unless it finds both that the anticompetitive effects are outweighed in the public interest by the probable benefits of the transaction in meeting significant transportation convenience and needs of the public and that such significant needs may not be satisfied by a reasonably available alternative having materially less anticompetitive effects.

The second test, the so-called "public interest" test, provides that the Transportation Department is to approve an acquisition of control unless it finds the transaction to be inconsistent with the public interest.

The Department is also authorized to impose, if it determines to approve a proposed transaction, such terms and conditions as it finds just and reasonable and such modifications as it believes appropriate.

Finally, the Department is authorized to grant an exemption from these requirements if it is determined that such an exemption is, once again, in the public interest.

I would also point out, parenthetically, that, by operation of the Justice Department/Federal Trade Commission regulations, the otherwise applicable Hart-Scott-Rodino filing requirements are met simply by contemporaneously filing a copy of a complete D.O.T. application with the Justice Department and the Federal Trade Commission.

In summary, the regulatory structure developed by the Congress was and is quite sound, and its intent as to how that structure was to be managed was, in my view, quite clear. I am concerned, however, that the manner in which these provisions have been implemented over the past few years may, if not modified, seriously compromise the industry's ability to achieve the Deregulation Act's important pro-competitive goals in the future.

IMPLEMENTATION OF, AND OPERATIONS UNDER, THE DEREGULATION ACT IN GENERAL AND THE MERGER PROVISIONS IN PARTICULAR

On an overall basis, I believe deregulation has -- at least until recently -- been quite successful. We have had new carriers, including America West, enter the national air transportation system, service levels have increased substantially, and, perhaps most importantly, fare levels have dropped dramatically, thus permitting ever greater numbers of the American public to take advantage of that system. This is not to say that there have not been problems, such as service to small- and medium-sized communities which still needs to be improved, but, in general, I think it is fair to say that the American public has benefitted significantly from airline deregulation.

There are, however, several storm clouds on the horizon that must be addressed if the benefits of deregulation envisioned by Congress will continue to be available in the future.

First and foremost, the anti-competitive effects of the computer reservation systems, which are presently dominated by American, United, and, to a

lesser extent, by Delta, Texas Air and T.W.A.-Northwest, must be addressed as soon as possible. The majors' CRS systems are at the root of the unreasonable industry concentration, excessive market domination, and monopoly power that we face today, and will lead to conditions that will allow those large carriers to increase prices, reduce services and reduce competition. Moreover, it is these systems and their inherent biases that seriously impede entry into new markets and compromise the ability of small carriers to grow larger. The Transportation Department, but only at the urging of the Congress, has finally initiated an investigation of these systems, and it is critically important that the information being obtained in that investigation be analyzed and new regulations developed to eliminate the serious competitive problems raised by the operation of those systems.

Second, with the increased consolidation and concentration that has occurred over the past two years (a subject which I will discuss in greater detail shortly), the problems of airport access -- be they in the form of gates, slots, ticket counter space or restricted access to an airport in the guise of noise

regulation -- have increased substantially, thus seriously compromising the ability of airlines to enter new markets.

Finally, there is the question of the constraints imposed by the existing air traffic control system, which has, quite simply, not kept pace with the demands placed upon it by deregulation. And, it is important to recognize that the principal burdens resulting from the inadequacies of that system fall upon new entrant airlines that have not yet fully developed their route systems, particularly at the capacity controlled airports where incumbents have a significant competitive advantage because of their "grandfathered" ownership of operating slots.

While these problems are, in my view, capable of solution through intelligent D.O.T. intervention to assure that the marketplace <u>can</u> function effectively, the incredible concentration and consolidation that D.O.T. has permitted to occur in the two years since it assumed responsibility for administration of the merger provisions of the Federal Aviation Act has greatly exacerbated the impact of these problems on the air transportation system, and may well threaten its long-term viability.

Since D.O.T. assumed responsibility for Section 408 of the Act on January 1, 1985, there have been a total of 13 mergers or acquisitions of certificated carriers presented to the Department, either for approval or exemption from the need for approval, and, in every instance, the transaction was permitted to go forward by D.O.T. During this period, the national air transportation system has lost, as independent operating airlines, carriers such as Eastern, Muse Air, Frontier, Republic, Empire, Ozark, Jet America, People Express, Western, P.S.A., AirCal, Horizon, and (if approved) Piedmont. These were mostly, of course, the very "small air carriers" that Congress fully expected would provide an ongoing competitive spur to the carriers that have acquired them, and that Congress directed be strengthened by D.O.T.

And, now what are we left with? As set forth in Table I, we have, as a consequence of D.O.T.'s actions, entered the age of the "mega-carrier" in which Texas Air, United, American, Delta, Northwest and USAir/Piedmont (if approved) will account for over 82% of the total system revenue passenger miles in the United States (January 1987 traffic). In 1986, the top six carriers had only 62.19% of the system rpms (once again based on January traffic). Moreover, from all appearances, both Pan American and T.W.A. are on the market, presumably to be purchased by one or more of

these mega-carriers, thus potentially eliminating two other carriers and further increasing the mega-carriers' market shares (up to 95%).

Table I - Major and National Carriers - Market Shares

1987 Carrier/ Carrier Group	Revenue Passenger Miles (%) 1987	1986	1985	1985-1986 Carrier/ Carrier Group
AMERICAN-AIR CAL	14.44	14.27	12.92	AMERICAN
UNITED	17.02	12.55	15.00	UNITED
TEXAS AIR GROUP 1/	18.32	10.43	10.59	EASTERN
DELTA-WESTERN	12.04	8.93	9.19	DELTA
PAN AM	6.49	8.49	8.85	PAN AM
TWA-OZARK	7.73	7.52	8.46	TWA
NORTHWEST-REPUBLIC	10.02	6.16	6.49	NORTHWEST
		5.50	4.48	CONTINENTAL
		3.57	2.87	PEOPLE EXPRESS
		3.33	2.70	REPUBLIC
		3.09	3.39	WESTERN
USAIR-PIEDMONT-PSA	7.13	2.93	2.61	USAIR
		2.63	2.22	PIEDMONT
SOUTHWEST-TRANSTAR	2.22	1.79	1.55	SOUTHWEST
		1.15	.97	PSA
WORLD 2/		1.09	1.30	WORLD
		1.04	1.46	FRONTIER
		.91	.95	OZARK
AMERICA WEST	1.31	.81	.61	AMERICA WEST
ALASKA-JET AMERICA	.92	.75	.62	ALASKA
		.57	.52	AIRCAL
BRANIFF	.81	.56	.59	BRANIFF
MIDWAY	.60	.56	.47	MIDWAY
HAWAIIAN	.74	.53	.17	HAWAIIAN
		.51	.31	NEW YORK AIR
			.32	TRANSTAR
		.25	.29	JET AMERICA
ALOHA	.12	.11	.12	ALOHA
AIR WISCONSIN 3/	.08			AIR WISCONSIN

1/ Does not include People Express and N.Y. Air, which carried 3.2% of the industry rpms in 1986.
2/ World has ceased scheduled operations.
3/ Air Wisconsin now qualifies as a national carrier in the D.O.T. reporting system.

To make matters worse competitively, the five largest carrier groups, as may be seen from Table II, own the five computer reservation systems that are in the marketplace and thus control over 86% of the market:

Table II

Carrier/Carrier Group	System	Market Share (RPMs)
AMERICAN-AIRCAL/PAN AM	SABRE	20.93
TAC NETWORK	SODAS	18.32
TWA-OZARK/N.W.-REPUBLIC	PARS	17.75
UNITED	APOLLO	17.02
DELTA-WESTERN	DATAS II	12.04

While I would not burden you with a detailed discussion of all of these mergers/acquisitions, I do believe that it is useful to discuss briefly four of these proceedings, United-Pan American, Southwest-Muse, TWA-Ozark, and Northwest-Republic. It was these proceedings that, in my view, created the impetus and regulatory environment for the other mergers/acquisitions. I would also like to suggest areas for reform in the future.

Turning initially to United-Pan American, D.O.T., by its decision, sent a clear message to the industry that the merger route was open to even the largest of carriers, which, of course, led to the

Northwest acquisition of Republic, the Texas Air purchase of Eastern (and, then, People Express/Frontier), the acquisition of AirCal by American, and the proposed acquisition of USAir/Piedmont by T.W.A.

In Southwest-Muse, the D.O.T. (notwithstanding the urgings of the Justice Department to decide the case on narrow, failing business doctrine grounds, because, in Justice's view, the merger raised clear competitive issues) gratuitously went beyond the failing business doctrine and, in essence, "wrote around" the serious competitive concerns raised by the Justice Department. And it was the very precedents developed in Southwest-Muse that were relied upon by the D.O.T. when it approved both the T.W.A.-Ozark and Northwest-Republic cases, both of which the Justice Department vigorously opposed.

In short, the D.O.T., by considering these cases in a vacuum and with no long-term notion as to how the industry might ultimately look if it were to approve these mergers/acquisitions, has left us, in a few short years, with an incredibly concentrated and oligopolistic industry. And, while I do not think it is too late to address the situation, it is clear that

several steps must be taken now to assure that the situation does not get any worse in the future.

First, while the transfer of the Department's Section 408 and 409 authority to the Justice Department has a certain appeal because Justice has demonstrated a more vigorous interest in evaluating the competitive effects of airline mergers over the past few years than has the Transportation Department, I have several concerns with such an approach:

> Initially, it is critically important to recall that, while Justice has been more vigorous than D.O.T. in its analysis of certain airline mergers, the current Justice Department certainly does not have the reputation of vigorously challenging mergers and acquisitions in other industries in the context of its Hart-Scott-Rodino and general antitrust enforcement responsibilities.
>
> Moreover, Justice has itself acquiesced in many of the airline mergers that have led to the increased concentration in the industry, and it is important to note that the Justice Department, although it participated vigorously in several of the

airline cases, never took any of the D.O.T. decisions to court, as it did, for example, in challenging the anti-competitive capacity decisions of the Civil Aeronautics Board in the mid-1970's.

Furthermore, the Justice Department is not well equipped to conduct the type of on-the-record hearings provided for in the Federal Aviation Act, and, given the short time periods and essentially secretive processes of the Hart-Scott-Rodino Act, it is not clear to me that there will be a meaningful opportunity for deliberative consideration at Justice, particularly given this Justice Department's apparent view that "big is better."

Finally, and in light of the excessive concentration that has already occurred and the need, in my view, for the analysis in future airline merger cases to go beyond mere competitive concerns so as to consider important public interest and national transportation policy matters, I question whether

the Justice Department, as opposed to the Transportation Department, is the proper agency to be making those decisions. I do believe, however, that it would be most useful for the Justice Department to play a greater role in D.O.T. proceedings in order that the always important competitive considerations are properly evaluated by D.O.T.

Second, on the assumption that the Section 408 authority is to remain at the Transportation Department, it is critically important that the Congress make it abundantly clear to the Transportation Department that its implementation of the merger/acquisition provisions over the past two years has not been consistent with the intent of Congress in passing the Airline Deregulation Act. In this regard, I often get the impression that D.O.T. believes that what it has been doing in the merger/acquisition area is consistent with that Congressional intent, and D.O.T. must be disabused of that notion from this day forward.

Third, given the excessive concentration that D.O.T. has permitted to occur over the past two years, going from an unconcentrated to a clearly oligopolistic

industry, the D.O.T. analysis in future merger/acquisition cases must go beyond mere competitive impacts (which themselves must now be more vigorous) and consider the important public interest and national transportation policy concerns that will be raised by any future acquisitions. In this regard, the likelihood that there will be any new certificated air carriers in the forseeable future is at best remote, since, in my judgment, Wall Street has closed the door on new start-up airlines, particularly after the demise of People Express. Thus, D.O.T. must carefully evaluate all future airline acquisitions, particularly those involving the five remaining "small" certificated carriers, Alaska, America West, Braniff, Midway, and Southwest, which can provide a meaningful competitive spur to the mega-carriers, as was the original intent of Congress in crafting the Deregulation Act.

Fourth, the only manner in which these now critically important competitive, public interest, and national transportation policy judgments can, in my view, be made in the future is by means of on-the-record hearings in which the Department has (1) the benefit of the time and thoughtful consideration given by an Administrative Law Judge who has developed a full

record on all of these matters, and (2) the opportunity for review of that decision at the highest levels of the Department. The use of show cause or exemption procedures, which result essentially in D.O.T. staff decisions based on what the staff "believes" the decision makers may think about a particular case, should, in my view, be utilized for merger/acquisition cases in only the rarest of circumstances. And, the Congress should make it abundantly clear to the Department that it must abandon its rulemaking proceeding of last May in which it proposed, among other things, to permit applicants to consummate a merger prior to a final decision being issued by the D.O.T. Withdrawal of that rulemaking is particularly important for the reason that the D.O.T. and the airlines appear to be operating on the assumption that certain of the proposals contained therein are somehow already in effect.

Fifth, I also believe that the Congress should send a clear signal to the Department that its policy with respect to the use of voting trusts in merger proceedings must be revisited. As the Justice Department has pointed out to the Transportation Department on several occasions (the most recent of which was in connection with the USAir-Piedmont voting

trust), a company's purchase of a substantial amount of a competitor's stock can have anticompetitive effects even if the purchaser cannot vote its shares. If the management of the companies perceive that the transfer of ownership makes the ultimate consummation of the acquisition more likely, they may cease to compete aggressively against one another. In addition, the acquiring company may hold back from competing aggressively if to do so would diminish the value of the acquired company's stock that it owns. Furthermore, if the acquisition is ultimately disapproved, the existence of a large block of shares that must be divested may weaken the viability of the acquired company. Finally, these risks to competition, as the Justice Department has pointed out, increase in proportion to the amount of stock that a company is allowed to acquire. As noted previously, the Federal Aviation Act presumes that control is acquired at the 10% level, and this should, in our view, be the highest level of stock ownership permitted until after a merger proceeding is concluded.

Sixth, in light of the events of the last several months concerning airline mergers, there must be ongoing Congressional oversight to assure that the pro-competitive intent is, in fact, carried out by the Department as it considers such cases in the future.

In this regard, Mr. Chairman, this Committee is to be commended for conducting these hearings, and we would urge even increased vigilance in the future.

Finally, I would note that the Congress is presently considering several legislative proposals concerning takeovers, and, although more general in nature, they would also be beneficial to airlines that may be subject to such action, particularly takeovers by those who are not in the airline business and, thus, are outside the jurisdiction of the Transportation Department. Among the proposals that America West believes should be enacted are those that would:

(1) amend Section 13(d) of the 1934 Securities Act so as to shorten substantially the time period within which disclosure of an ownership interest in a company must be made, reduce that percentage to one or two percent, and preclude any further purchase of shares for a given period of time after making the filing;

(2) preclude so-called "creeping" tender offers by requiring holders of a given percentage (say 10%) of stock to make a formal tender offer for all of the stock once that threshold is reached, and extending the period for a tender offer from 20 to 90 days;

(3) require that a raider have 100% of the financing in place prior to making a bid, and purchase all the shares at a single cash price;

(4) require that stockholder votes on takeover matters be limited to those who have held shares for a specififed period of time prior to the announcement of the proposal; and

(5) preclude "greenmail" activities by corporate raiders.

As I mentioned previously, America West deals on a daily basis with several important competitive constraints, and, while we are confident that we can deal with these matters and sustain our profitability as we grow, I submit that neither the management nor, more importantly, the employees of America West should be subject to a "Sword of Damacles" hanging daily over its operations in the form of a threat by a corporate raider to swallow up America West, particularly without the public interest protection of an intelligent and thoughtful review by the Transportation and Justice Departments.

Mr. Chairman, that concludes my prepared testimony, and I would be pleased to respond to any questions that you or the other Members of the Committee might have.

* * *

Senator METZENBAUM. Ms. Wyatt, we are very happy to welcome you here today, and I am rather proud and pleased that you are with us because you are something different around here. Quite often, we only have people testify from big organizations or companies. You are a public citizen and you have had some problems. Tell us about them.

Ms. WYATT. Thank you, Mr. Chairman. I am here today as a passenger and as a mother and as a consultant.

Senator METZENBAUM. Pardon?

Ms. WYATT. As a passenger, a mother, and as a consultant.

Senator METZENBAUM. Okay.

Ms. WYATT. It is my privilege to have this opportunity to speak to you about the problems of traveling. I have traveled extensively, starting when I was an airline stewardess a number of years ago.

Examples of several of these incidents which have occurred recently and which were avoidable was one when I was arriving at midnight in Toledo to speak at a conference at 9:00 a.m. I found that my luggage had gone to Frankfurt, Germany.

On two occasions, my flights were canceled, with no explanation, at the last minute. One was for a business meeting in Boston, at which time I was unable to reschedule because it was a Friday afternoon, and the other involved a trip to Sarasota where I was due to participate in a wedding. I arrive there six hours late.

Another harrowing experience was the flight into Denver when our plane was caught in the wake of a 747 and we abruptly found our wings perpendicular to the ground. The plane was righted and we landed, an experience I do not care to repeat.

One should also consider the weight of objects placed in the overhead racks. Falling items can cause injuries, and I recently had this happen to a woman sitting next to me.

Certainly, we all have our horror tales, and we also have our stories of compassion of flight and ground crews. Most are concerned, dedicated employees, but the system overtakes them.

I can manage to address these problems, but when my son began to encounter them, it was time for me to look into some solutions. Young people who travel alone are not resourced either emotionally or materially to resolve situations which are difficult, situations which require maturity and knowledge. Such was one that our son, Fred, aged 16, encountered in February 1986.

He attends school in northern California and the nearest airport is Reno. It was decided the family would meet in Boston for a ski vacation. Fred arrived at the Reno Airport and the plane was an hour late departing due to weather. Because of this delay, it was projected that he would miss his connecting flight in Salt Lake City.

Thus, the airline changed the flight out of Salt Lake from that evening to the next morning. Fred arrived in Salt Lake City and noticed that the connecting flight was still at the gate, as it, too, had been delayed. His luggage had been tagged for Boston in Reno and it had already been transferred.

Upon presenting his ticket and explaining the situation, the agent said that airline restrictions made it impossible for him to board, as his ticket had been changed at the point of origin, unless

he paid an additional $180. It was the airline, not Fred, who had changed the ticket.

Needless to say, Fred, after some discussion, decided that he would have to stay in Salt Lake City and take the morning flight. Fred and another boy took the bus into town and tried to get a hotel room. Because they were only 16 and had no luggage, they could not find a hotel which would accept them.

The one boy had a credit card and the boys were dressed most presentably. Yet, they were basically on the street in a strange city at 10 p.m. Finally, Fred, who appears older than his years due to his height, told the people in the Marriott that he was 21. As he told me later, we were frozen, tired, hungry, and afraid of what could happen.

The room cost $150 for the night. They went to the dining room, but because they had no coat or tie—they were en route—they were unable to eat there, so they had room service. It was not an inexpensive evening.

Fred could not reach us, as we were traveling to Boston to meet him. I left messages twice with the airline, but he received neither. When he finally arrived in Boston the next afternoon, the airline had lost his skis. Twice, they called us in New Hampshire to say they had found them and we drove the 40 miles round trip and were told, sorry, do not know who called you, but we do not have the skis. We finally got them 3 days later for our ski vacation.

The next 5 trips Fred had were a canceled flight; I spent the night in the airport waiting for him on that one. Another flight was rerouted due to a mechanical failure. Another was a bomb scare, and the other was due to an overbooking, on which they put Fred on another airline. The final one was a 5-hour delay which made him miss the last transportation back to school.

Fred and I are both seasoned travelers. Imagine this happening to others who have had relatively little flying experience.

One of the more serious problems is taking or meeting a child at the gate. Security usually will not let anyone through without a ticket. It happened to a friend of mine recently. She had her 13-year-old go to the gate while she parked the car. He has his ticket, but not his coat or money.

His mother tried to get through security, but they refused. So she went to the ticket counter, bought a ticket for the flight, went to the gate, gave her son the items, went back to the counter, turned the ticket in, saying she had changed her mind, and not everyone has the time or funds to be that creative.

We have the problems. What are the solutions? One suggestion would be that anyone could get a security pass to go to the gate to take or meet a child, the elderly, or the disabled.

Airlines need also to be concerned that young people have a safe haven. Sending a child to a hotel alone or leaving him to shift for himself can be a most difficult experience.

Senator METZENBAUM. Wind up, please.

Ms. WYATT. If the airline takes a person as a passenger, they are responsible for them to reach their destination.

In conclusion, Mr. Chairman, we have put together a brochure for the Department of Transportation for the use of young people

who are traveling alone as a consumer education project, and I want to say America West is participating.

Thank you.

[Prepared statement follows:]

Testimony by Barbara D. Wyatt

Mr. Chairman and Honored Gentlemen:

It is my privilege to have this opportunity to speak to you about the problems of traveling. I have traveled extensively, starting when I was an airline stewardess a number of years ago. Like others I have encountered delays, cancellations, and lost luggage, been angry, chagrined, tired and emotionally drained. In most instances the airlines do an outstanding job considering the number of passengers they carry, however, three incidents occurred that caused problems - each was avoidable. On my flight when arriving at midnight in Toledo, I was to speak at a conference at 9:00 a.m., however, on arrival I learned that my luggage had gone to Frankfurt, Germany. On two other occasions my flights were cancelled at the last minute with little concern as to how to reach one's destination or how to retrieve the luggage already on the plane. One flight cancellation precluded getting to Boston for a business meeting as it was Friday and all flights were filled thus, I had to cancel altogether. The other involved a cancelled flight to Sarasota where I was due to participate in a wedding - six hours later after going a circuitous route, I made it, but with little help from the airline on which I was originally scheduled.

A harrowing experience was the flight into Denver when our plane was caught in the wake of a 747 and we abruptly found our wings perpendicular to the ground. The plane regained its normal flying position and we landed. Not an experience I care to repeat.

One should also remind the travelers to consider the weight of objects placed in the overhead racks. Falling items can cause injuries and this recently happened to the woman sitting next to me.

Certainly we all have our horror tales and we also have our stories of compassion as exhibited by flight attendants and ground crew. Most are concerned, dedicated employees, but the system overtakes them. The sheer numbers and volume of business does not always allow for that special follow through which can make such a difference.

I can manage to address these problems, but when my son began to encounter problems when flying alone, it was time to look for solutions. Young people are not resourced either emotionally or materially to resolve situations which are difficult or situations which require maturity and knowledge. Such was the one that our son Fred, age 16, encountered February 1986. He attends school in northern California and the nearest airport is Reno. It was decided the family would meet in Boston for a ski vacation. Fred arrived at the Reno Airport and the plane was an hour late departing due to weather. Because of this delay, it was

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projected that he would miss his connecting flight in Salt Lake City; thus the airline changed the flight out of Salt Lake from that evening to the next morning. Fred arrived in Salt Lake City and noticed that the connecting flight was still at the gate as it too had been delayed.

His luggage had been tagged for Boston in Reno and it had already been transferred. Upon presenting his ticket and explaining the situation the agent said that airline restrictions made it impossible for him to board unless he paid an additional $180.00 because his ticket had been changed at the point of origin, even though it was not changed at Fred's behest. Needless to say Fred, after some discussions, decided he would have to stay in Salt Lake City and take the morning flight. Fred and another 16 year old took the bus in town and tried to get a hotel room. Because they were only 16 and had no luggage, they could not find a hotel which would accept them. The one boy had a credit card and the boys were dressed and coiffed most presentably - yet they were basicly on the street in a strange city at 10:00 p.m. Finally, Fred, who appears older than his years due to his height, told the registration personnel in the Marriott that he was 21. As he told me later, we were frozen, tired, hungry, and afraid of what could happen. We wanted to feel safe so we took the room for $150.00 per night. They were not permitted in the dining room as they did not have a coat or tie. They had room service. It was not an inexpensive night!

Fred could not reach us as we were traveling to Boston to meet him. I left messages twice with the airline, but he received neither.

When he finally arrived in Boston the next afternoon, the airline had lost his skiis. Twice they called us in New Hampshire to say they had found them; we drove the forty miles round trip and were told "sorry, don't know who called but we don't have the skiis." We finally got them three days later, but, missing was the extra equipment in the ski bag.

The next five trips Fred had a cancelled flight (I spent the night in the airport waiting for that one); another flight was rerouted due to a mechanical problem; another was a bomb scare; and the fourth was due to an overbooking at which time they put Fred on another airline at the last minute, meanwhile I was pacing at another airline for two hours while he was at another airline. The final was a five hour delay, so he missed the last transportation to school and we had to have a taxi for $40.00.

Fred and I are both seasoned travelers. Imagine this happening to others who have relatively little flying maturity!

One of the problems is taking or meeting a child at the gate. Security usually will not let anyone through without a ticket. It happened to a friend recently. She had her 13 year old son go to the gate while she parked the car. He had his ticket, but not his coat or money. His mother tried to get security to let her

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through, but they refused, so she went to the counter, bought a ticket for the flight, went to the gate, gave the items to her son, she then went back to the counter, turning in the ticket, saying she had changed her mind. Not everyone has the time or the funds to be so creative!

We have the problems, what are some solutions. One suggestion would be that anyone could get a security pass to go to the gate to take or meet children, the elderly, or disabled. Certainly they would go through the security check like everyone else.

Airlines need also to be concerned that young travelers have a safe haven. Sending a child to a hotel alone or leaving him to shift for himself can be a difficult experience. If the airline takes a person as a passenger they are responsible for them until they reach their destination.

Finally because of our experience, I contacted the Dept. of Transportation and the National Child Safety Council to develop a public/private partnership, with the plan to produce a brochure to educate parents and the young travelers. The brochure would include do's and don'ts on traveling plus tips for teenagers. Secretary Elizabeth Dole has been actively promoting this program with PSA's, news video, and interviews. Airlines, airport operators, and travel agents met with the Department of Transportation to review the material and put generic policy on the brochure. The brochure is being used throughout the industry and in connection with this effort airlines are taking a greater interest in their young travelers. The DOT has been very concerned and serious about addressing all complaints.

Certainly the commitment to safety and the concerns of the consumer are being addressed by the airlines and the Department of Transportation.

Testimony by: Mrs. Barbara P. Wyatt

"If your child has to fly alone, these handy travel tips can help ensure a smoother flight . . . part of our continuing commitment to safe travel across all modes of transportation."

Elizabeth Hanford Dole
U.S. Secretary of Transportation

A Public Service

National Child Safety Council
U. S. Department of Transportation

PARENT CHECKLIST

- ☐ Tell the reservation agent and ticketing agent that your child will be traveling unaccompanied and the age of your child.
- ☐ Try to make a reservation on a non-stop flight or a flight that does not require a change of planes.
- ☐ If your child has not flown before, take a trip to the airport. Familiarize your child with airport personnel and the areas where he/she can get questions answered and assistance.
- ☐ Be sure to check your child's ticket to be certain that the flight information is correct and copy it on your child's TRAVEL CARD. Be certain to identify the airport and flight number. (Some cities have more than one airport.) The person meeting your child should have the same information, including stopovers, and should contact gate personnel immediately on arrival. They must provide identification that corresponds to the name of the child's TRAVEL CARD.
- ☐ Arrive well before departure time in order to avoid delays in check-in and airport security. Introduce your child to the ticket agent at the gate. REMIND the airline that your child (through age 11) will need assistance changing planes when appropriate.
- ☐ Be certain that your child carries identification and cash for emergencies. Have change for telephone calls. Airlines will assist children should they need to contact members listed on the TRAVEL CARD. Remember flights can be delayed, missed, cancelled, or rerouted.
- ☐ Provide entertainment materials to keep your child occupied during the flight. Also, remember there may be a charge for headsets or meals and refreshments.

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☐ Have your child keep the ticket in a safe place. Tickets are negotiable. If the ticket is lost, your child should go immediately to airline personnel. The information on the TRAVEL CARD will assist the airline.

☐ Show your child the luggage stubs and how they match tags on the luggage. Keep carry-on luggage to a minimum. Remind your child of the items for which he/she is responsible. Report any losses to airline personnel immediately.

☐ Tell your child never to leave the airport alone or with a stranger. If immediate assistance is needed, an unaccompanied child should go to the uniformed personnel or the front of the airline ticket counter. Tell your child not to wait in line if immediate assistance is needed.

☐ The TRAVEL CARD will be helpful in giving the airline information needed to help your child have a safe and enjoyable trip.

☐ Have your teenager read and know the following TIPS FOR TEENS.

TIPS FOR TEENS

★ If you need help in locating your flight, airline information, family or friends, ask airline personnel to assist you. (Remember, persons meeting passengers cannot go beyond the security check point.) The airlines are anxious to make your trip a pleasant one.

★ If you are not on the flight that is listed on your TRAVEL CARD, ask airline personnel to contact the person listed on your TRAVEL CARD and inform them of your flight changes.

★ Never leave the airport to locate lodging should your flight be delayed or cancelled. Many hotels will not accept young people without an adult. Seek assistance from the airline.

★ Do not leave the airport with a stranger.

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GENERAL AIRLINE POLICY

Although airline practices vary, the following policies regarding child travel generally apply. Be sure to contact the airline to determine its specific policies.

- Unaccompanied children under the age of five will not be accepted under any circumstance.
- Unaccompanied children 5, 6 or 7 years of age may be accepted on a nonstop or through flight and must be accompanied by a responsible adult until the child is boarded. The child must be met by a responsible adult.
- Unaccompanied children 8 through 11 years of age may be accepted on nonstop, through or connecting flights. Reservations must be confirmed to the destination. The child must be accompanied by a responsible adult until boarding and must be met by a responsible adult at the destination. Children making connections will be assisted by the airline.
- Unaccompanied children will be charged the published adult fare.
- Unaccompanied children ages 12 through 15 years of age may receive assistance making connecting flights upon request.
- Unaccompanied children will be delivered by the flight attendant to the gate agent. The child must be met by the responsible adult listed on the TRAVEL CARD or unaccompanied minor form. Proper identification and signature are required before the child's release.The airline must be notified of any changes.

CHECK WITH INDIVIDUAL AIRLINES SINCE POLICIES MAY VARY.

U.S. Department of Transportation

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TRAVEL CARD

SEAT# _____

Name of Passenger _____ Age ____

SENDER: _____

Name _____ Relationship to child

_____

Address

Telephone: Day ( ) _____

Evening ( ) _____

RECEIVER: _____

Name _____ Relationship to child

_____

Address

Telephone: ( ) _____

Evening ( ) _____

Extra Telephone Number (Should it be needed) _____

AIRLINE INFORMATION:

Airline _____ Ticket# _____

Destination: _____ Flight# _____

Departure Time: _____ Arrival Time: _____

List Connecting Flights below:

Airline _____ Ticket# _____

Destination _____ Flight# _____

Departure Time: _____ Arrival Time: _____

Seat# _____

Airline _____ Ticket# _____

Destination _____ Flight# _____

Departure Time: _____ Arrival Time: _____

Seat# _____

Passport/Visa No. _____

(For international travel only)

MEDICAL/DIETARY ALERT _____

_____

- Detach TRAVEL CARD and place in ticket jacket immediately.
- PRINT ROUND TRIP INFORMATION ON THE BACK OF THIS CARD.

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Senator METZENBAUM. Thank you very much, Ms. Wyatt.

Mr. Dettelbach, have you seen a difference in fares and service since the last round of mergers?

Mr. DETTELBACH. Yes. We have seen a greater high profile on the maxi-saver and super-saver fares, which really have very little applicability to the vast majority of the traveling public.

We have also seen an increase in fares from non-hub cities, those cities which are not hub or gateway cities, to non-hub cities of anywhere between 10 and 15 percent. This happened, I think, last week or just the week before.

Senator METZENBAUM. You represent the business traveler who does business with your firm.

Mr. DETTELBACH. Correct.

Senator METZENBAUM. How can the individual best protect himself or herself from mistreatment?

Mr. DETTELBACH. Well, the business traveler is at the mercy of the airlines today. They themselves have no way of protecting their method of travel or their pricing of travel. They have to travel, they have to go; the airlines know this.

The cheaper fares go to the touring travel public. The business traveler, again, is at the mercy of the airlines. I do not see any protection in it without proper legislation to do so.

Senator METZENBAUM. Do you have an opinion as to whether airline maintenance has gone up or gone down in recent years?

Mr. DETTELBACH. In my text, I reflected a personal incident where the whole row of seats was not attached to the airplane. We have seen and have a number——

Senator METZENBAUM. That is better than losing the wheels. [Laughter.]

Mr. DETTELBACH. That is correct, that is correct.

We have a cabinet at our office called The Little Shop of Horrors, and it reflects the complaints that our corporate customers have made concerning the airlines. Much of them have to do with maintenance.

It seems to me that the complaint figure that is espoused by the people up here is not indicative of what really is going on out there in the community.

Senator METZENBAUM. Mr. Beauvais, you went into the business, as I understand it, three years ago?

Mr. BEAUVAIS. About four years ago, yes.

Senator METZENBAUM. Four years ago, and you have how many planes flying now?

Mr. BEAUVAIS. Forty-nine Boeing 737s.

Senator METZENBAUM. The fact that you were able to go in during all of these mergers, and hopefully you are successful, is sort of a testimonial to the fact that entry is possible in this market.

I wonder if you would address yourself to that question and to what you think your prospects are as to being able to survive in view of the computerization control as well as the other kinds of competition that you face.

Mr. BEAUVAIS. Well, there is a two-part or three-part answer. Number one, we were financed four years ago. Today, I think it

would be far more difficult. The merger and consolidation phase in this industry really became evident just in the last two years.

When we were formed in 1983, it was a very healthy, effective, competitive environment. It is much different today. With the consolidating strength going on right now, instead of a level environment or level playing field, it is like scaling a cliff. We do not mind that.

In terms of facing a challenge, we are confident we can do it, but we do feel that the prospect of financing new airlines today is fairly remote. We do not believe that Wall Street is receptive.

Senator METZENBAUM. Other than the fact of financing, what do you see as the barriers to entry? Assume that x, y or z individual or company wants to go in the airline business. If you can make a profit, quite often you can find the financing.

So my question to you is, putting aside the issue of financing, what are the other barriers to entry?

Mr. BEAUVAIS. Well, that is the major one, primarily because you have to have a concept of success in the investment community in order for people to make an investment. When you have many competitors and some new carriers demonstrating success, then you will have the right environment.

But today you have mega-carriers, and the prospective investor looks at the competitive confrontation and tells himself that no way can you have an effective airline operation starting from scratch.

Senator METZENBAUM. What about landing slots?

Mr. BEAUVAIS. Pardon me?

Senator METZENBAUM. In other words, can you get slots at Midway or at O'Hare or if you want to fly into LaGuardia or Kennedy?

Mr. BEAUVAIS. Those are very serious impediments today, far more serious than they have been in the past. We cannot get into LaGuardia; we would like to. We would serve LaGuardia today if we had the ability to obtain slots. We cannot get into Washington National either.

Senator METZENBAUM. You cannot get into Washington National?

Mr. BEAUVAIS. No. We just obtained some slots at O'Hare, which were the last FAA slots that were granted through the lottery system. We certainly support Chairman Kahn's position with respect to slot access as far as an auction is concerned.

The second part of that, though, is that the ability to own a slot should not be limited to airlines. I think cities have the right to own slots as well. Let me give you an example. If Louisville, Kentucky, is worried about service to New York and they want service from Louisville to LaGuardia, then they ought to have the right to obtain that slot in order to offer it to a willing carrier to provide better service for the community of Louisville, Kentucky.

Senator METZENBAUM. Ms. Wyatt, you note that you have been a frequent flyer for many years. Would you say that service at the present time is better, worse, or about the same as it has been in the past?

Ms. WYATT. I think, Mr. Chairman, I would have to say it has deteriorated.

Senator METZENBAUM. Pardon?

Ms. WYATT. I think I would have to say it has deteriorated, but more importantly I think we have so many more children who are flying alone, too; there are half a million a year. Those are the ones we also have to be concerned about.

Senator METZENBAUM. Senator DeConcini, are you ready?

Senator DECONCINI. Yes, sir, I am, Mr. Chairman, and thank you.

I do have a question. I talked to Mr. Beauvais before and I did not—you know how it is; after you leave, you think of that brilliant question. I do not know how brilliant this one is, but it is one that came to my mind.

With the remarkable success you have had in the last three-and-a-half years, would it be possible for a new carrier today just starting out to achieve those same successes, and what particular barriers would——

Senator METZENBAUM. I just asked that.

Senator DECONCINI. Did you? OK, great. See how brilliant that question was? [Laughter.]

What did he say?

Senator METZENBAUM. He says that you cannot get the money to go into the business today. That is the major impediment.

Senator DECONCINI. Well, then the other question I wanted you to refer to, and perhaps your statement does, Mr. Beauvais, is the computerized reservation service. What does that do to an airline such as yours that is growing and competitive and you are not one of those two big ones?

Mr. BEAUVAIS. If you are wing tip to wing tip with a carrier who has a major CRS system and you fly——

Senator DECONCINI. Wing tip to wing tip means——

Mr. BEAUVAIS. Both of you have a flight at 8 a.m. in the morning going to the same destination.

Senator DECONCINI. Yes.

Mr. BEAUVAIS. You will not carry the same number of passengers; you will probably have between 30 and 40 percent less traffic if the total traffic were booked through the CRS system, and about 80 to 85 percent is today. So you are at a competitive disadvantage.

That is what drove Western into Delta, that is what drove Frontier out of Denver, that is what created this most serious problem for People Express. It is an impediment to competition and it is a restraint of trade from the standpoint that it is a monopoly power by those who have it.

Senator DECONCINI. Well, you are in it. How does it work? I mean, is it strategized that the people who are hired by one of those computerized services are told or ordered to book their airline first before they book Southwest or America West or somebody else?

Mr. BEAUVAIS. It is an automatic display shown on a computer screen to a travel agent that they use to book their passengers.

Senator DECONCINI. And theirs come up first?

Mr. BEAUVAIS. Absolutely, and most of the travel is booked right off the top line. So from the standpoint of quick, efficient operation, those passengers are there and gone, and in the CRS carrier's seat.

Senator DECONCINI. If nothing is done in this area or in stronger enforcement, which your statement underscores, do you see a day or a time when regulation may be necessary?

Mr. BEAUVAIS. Yes, I do. As a matter of fact, what we have today with restricted entry at airports, with the overwhelming dominance of the CRS system, and the oligopoly that is forming with five or six mega-carriers, we have got a form of re-regulation already taking place and a domination that really does translate directly to higher prices and poorer service.

We would strongly prefer, therefore, when we look to the future to have a regulated environment as opposed to having the industry continue in the direction it is going today. It is a much lesser evil that we face.

Senator DECONCINI. But that is in lieu of or as the alternative to strong enforcement of the existing laws based on mergers and what have you.

Mr. BEAUVAIS. Exactly. We are molded to competition. If you divested the CRS system from those who have it and you created an environment that encouraged many competitors in the marketplace, by far you have the best system, you have the best price, you have the best service, you have the most efficient producers of the product, and the whole system will work itself. But you must correct the course that this industry is on.

Senator DECONCINI. Mr. Dettelbach, can you comment on that?

Mr. DETTELBACH. Yes, I can. I have a slightly different view of those CRS systems. Number one, great dollars were expended by those airlines to develop them for a competitive mode. It is the manipulation of the systems as they exist today.

For instance, Dallas or Denver consolidated other airline systems into a consolidated database. It is the consolidation of the database. If you direct access any airline, you get a different view on many things than you do when you look at the consolidated database.

In my text, I submitted some examples taken at the same time on the same day for a specific flight to show the difference in the data representations.

Senator DECONCINI. What about the question as to if more enforcement is not imposed, stricter enforcement, would you favor—maybe you said that in your statement—would you favor regulation of the industry?

Mr. DETTELBACH. I would not favor re-regulation in the total picture of the industry.

Senator DECONCINI. That is what I mean, re-regulation.

Mr. DETTELBACH. What I would favor is utilizing the tools of government in a way to enforce areas that have problems.

Senator DECONCINI. So you are talking about more enforcement?

Mr. DETTELBACH. Yes.

Senator DECONCINI. If we cannot get more enforcement, what do you think we should do?

Mr. DETTELBACH. I think we should introduce some legislation to produce more enforcement.

Senator DECONCINI. To mandate more enforcement which could be enforcing present laws or re-regulation?

Mr. DETTELBACH. Or adding to the books possibly some new laws which give enforcement powers.

Senator DECONCINI. Transferring enforcement powers, as the Senator from Ohio has suggested? Is that a good alternative?

Mr. DETTELBACH. I think it might be.

Senator DECONCINI. How about you, Mr. Beauvais? Are you familiar with the Senator's bill?

Mr. BEAUVAIS. I am. I am not an attorney, but I do feel that it is very important if those powers are transferred that there would be an administrative proceeding so that the proceeding can be considered in a fish bowl so that people can have the right to submit testimony and counter their adversary in that investigation before a decision is made.

It is my understanding that DOT has that capability with their administrative law judges. It is just that those proceedings have not been followed in the mergers that have been contemplated or decided on thus far.

We urge the DOT to have full evidentiary hearings in pending mergers where you have a chance to develop the record, and it is my understanding that the Justice Department does not have that capability.

Senator DECONCINI. Ms. Wyatt, I did not mean to leave you out.

Ms. WYATT. That is perfectly all right.

Senator DECONCINI. I just want to say that your testimony sounds like myself standing around some airports, present airlines excluded, of course.

Ms. WYATT. I think perhaps if the airlines would list their policy on some of these areas, that might be a way to alleviate some of the difficulties.

Senator DECONCINI. Force them to list their policies?

Ms. WYATT. No. Recommend they list their policies or post them in the airport.

Senator DECONCINI. Okay, thank you very much.

Thank you, Mr. Chairman, and thanks again for these hearings. They have been very, very helpful to this Senator.

Senator METZENBAUM. Thank you, Senator DeConcini. I might say to you that under the bill that we intend to introduce next week, there would be requirements on the airlines to indicate specifically their policies in a number of areas, and we would give the Department of Transportation the authority to implement even further the question of regulation.

I might say to my colleague from Arizona that the Administration has indicated that they are not opposed to moving the jurisdiction from DOT to Antitrust. There is some problem with respect to some pending issues which I think we can work out.

Mr. Beauvais, I will ask you one last question. Is Arizona West making a profit?

Mr. BEAUVAIS. America West.

Senator METZENBAUM. America West.

Mr. BEAUVAIS. Yes, we were profitable in 1985 and 1986. I would like to make one comment with respect to airline safety and the FAA's surveillance of the airline industry. In 1986, we had 500 visits from the FAA. We think that they are doing a very fine job in this area with respect to how they oversee our operations.

Senator METZENBAUM. I want to thank each of you for participating. This hearing stands adjourned.

[Whereupon, at 12:07 p.m., the subcommittee was adjourned.]

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